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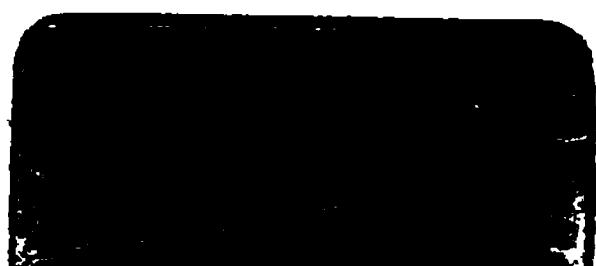
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Amos May Jr.

# REPORT

OF THE

TWENTY-SEVENTH ANNUAL MEETING

OF THE

# American Bar Association

HELD AT

ST. LOUIS, MISSOURI

*September 26, 27, and 28, 1904.*

PHILADELPHIA :

• DAWD PRINTING AND PUBLISHING COMPANY,  
34, SOUTH THIRD STREET.

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THE  
TWENTY-EIGHTH ANNUAL MEETING

WILL BE HELD AT

NARRAGANSETT PIER, RHODE ISLAND,

*On Wednesday, Thursday and Friday,*

*August 23, 24 and 25, 1905.*

TRANSACTIONS  
OF THE  
TWENTY-SEVENTH ANNUAL MEETING  
OF THE  
American Bar Association,  
HELD AT  
ST. LOUIS, MISSOURI,  
SEPTEMBER 26, 27 AND 28, 1904.

*Monday, September 26, 1904.*

The Twenty-seventh Annual Meeting of the American Bar Association convened at Festival Hall, in the Louisiana Purchase Exposition grounds, at St. Louis, Missouri, on Monday, September 26, 1904, at 10 A. M.

The meeting was called to order by Francis Rawle, of Pennsylvania, the last President, who introduced the President, James Hagerman, of Missouri, who then took the chair.

The President:

Gentlemen of the American Bar Association: We are in a territory now which is ruled by a mild and beneficent ruler. He is known around the world for his achievements and his worth. We of the West have an especial interest in him, for we believe that he is the representative, if not the incarnation, of the spirit which acquired, which has developed and which will preserve and transmit the Louisiana Purchase and the states which have been carved and are to be carved out of it. It gives me more than ordinary pleasure to present to you Honorable David R. Francis, President of the Universal Exposition.

David R. Francis, of Missouri:

Mr. President and Members of the American Bar Association: It is my pleasure and my very great honor on behalf of the Exposition management to extend to the members of this Association a cordial greeting. You need no assurance from the President of the Exposition to convince you that you are welcome within these grounds and that the Exposition Company feels honored by your presence. The International Congress of Arts and Science, which has just adjourned, followed an International Congress of Parliaments, or Inter-Parliamentary Union, to promote international arbitration. It is highly proper, therefore, that those two representative and international assemblies should be followed by an international meeting of lawyers and jurists. That the principles of law which have prevailed for so many centuries are the foundation of society lawyers need not be told, but if it had not been for those principles this Exposition could never have been held. We therefore, I say, feel under obligations to you for making these grounds the scene of your reunion of 1904. When we first extended an invitation to you to hold an annual meeting in St. Louis we were under the impression that this Exposition would be held in 1903. When it was postponed a year and you very kindly consented to change the date of your meeting in St. Louis from 1903 to 1904, you placed us under additional obligations.

Speaking for myself personally, I have the highest respect for the fraternity represented in this hall. It was the earliest ambition of my youth to be a lawyer myself, and it has been a constant source of regret to me for the last thirty-five years that I was unable to realize that ambition; and when a few days ago some one asked me what occupation I would take up at the end of this Exposition I was prompted to say that if not too old I would take up the study of the law. In such respect do I hold your profession.

I shall not detain you on this occasion by dwelling upon the extent of this Exposition by even mentioning the spirit that

inspired its plan and scope. Suffice it to say that we who have been engaged in the work from its inception, and it dates back six years, have had many difficulties with which to contend, many obstacles to overcome. We have never been discouraged and never until within the past few weeks have we begun to realize the fruition of our hopes. When we see that this Exposition, in addition to assembling examples of the best products of all civilized countries on the globe, is made the occasion for bringing together such representative assemblages as are now in this hall, we feel that all of our labor, all of the expenditure of treasure and of time and all of the sacrifice, if any, that we have made are amply compensated for.

The management expresses the hope that your deliberations may be prolonged to the greatest extent possible in order that the Exposition may have the advantage of the presence of so distinguished and so representative a body of men. It expresses the hope also that you may find time between the deliberations of your Association to view some of the objects of interest around these grounds, and it also cherishes the hope that this meeting of representative lawyers from all sections of this country, to be followed as it will be by the International Congress of Lawyers and Jurists, may have the effect of cementing still more closely not only all sections of our country, but all the countries participating in these congresses and all the countries participating in this Exposition.

I greet you on behalf of the management and again say to you, You are thrice welcome.

The President:

In the universe of Bar Associations our American Bar Association claims to be the central sun and our State Bar Associations are the fixed stars of varying magnitude. The Missouri Bar Association, one of our fixed stars (as Missourians think, of large magnitude) is here in the person of its President to speak to you. I have the pleasure of introducing Mr. John D. Lawson, President of the Missouri Bar Association.

John D. Lawson, of Missouri :

Mr. President and Gentlemen of the American Bar Association : As the representative of the Bar Association of the state in whose chief city you have wisely decided to hold your meeting this year, I bid you a cordial and hearty welcome.

In addressing your President, it is an easy task for me, for it is a Missouri lawyer addressing a Missouri lawyer. Looking back from President James Hagerman along the long line of distinguished men who have held the chief office in your Association, there is at the very end of that line the name of another eminent citizen, statesman and lawyer of Missouri, James O. Broadhead, whom at your first meeting you chose as your first President, and whose name is still tenderly cherished by layman and lawyer throughout this state. And of those of your members whose faces we saw and whose voices we heard last year, but who since then have gone over to the great majority, there is none who will be more missed among you to-day than Seymour D. Thompson, who was a member of our Bar for many years, a judge of our Appellate Court for twelve years, whose great legal treatises were written here, and from this city is issued the *Law Review*, through which he spoke to you.

It is not for me (for others can do it far better) to describe to you this great state, the fifth in population in the union, or the history of its development, its resources, its trade and commerce and what it has accomplished in literature, in science and in art. The State of Missouri, as one of its exhibits, has published an extensive volume in which these subjects are treated by a number of specialists, and a copy of this book is yours for the asking.

At many of your annual meetings you have been entertained by the Bar of the state or city in which you met. Now that you have been brought within the splendid and princely hospitality which the President and officers of the Louisiana Purchase Exposition dispense, there is not much left for us to do. But to show you our good intentions I cordially invite you to

a reception by the Bar Association of the State of Missouri to yourselves and ladies to-night at the Missouri State Building within these grounds.

And now, members of the American Bar Association, your brethren of Missouri welcome you to its soil.

The President :

The St. Louis Bar Association, of which Colonel Broadhead, Mr. Hitchcock and others were members, antedates the American Bar Association. Judge Rose, Judge Baldwin and Mr. Francis Rawle were among the original members founding this Association, and they are with us on this occasion and they can all testify that in the draft adopted for this Association practically the plan of the St. Louis Bar Association, which was formed in 1874, was followed.

I have the pleasure of now introducing a man well known to you because he is actively connected with our own Association, Chairman of the important committee on the Louisiana Purchase Exposition, which has had in charge the arrangement for the coming Universal Congress of Lawyers and Jurists, but he is here at this time to speak to you as President of the Bar Association of the city of St. Louis. I present to you Judge Klein.

Jacob Klein, of Missouri :

Mr. President and members of the American Bar Association : In the name and on behalf of the St. Louis Bar Association I welcome you to this city. You are in the very midst of a scene which of itself is a splendid picture, which represents the achievements of the human mind and of human activity from the beginning of time ; and, as the President of the Exposition management has stated, we lawyers know and feel that the possibility of such an Exposition depended upon law and justice, which to the lawyer are synonymous, and which in fact form the very ligaments of society. We know and feel that without law and without justice, which are the greatest interests of man upon earth, there could be no actual compact, there could be no order, there could be nothing of

the things which are represented before your eyes in this magnificent Exposition. It is not for me to dwell upon these matters. Every one of you feels and knows that the lawyer is interested from the bottom of his heart in the welfare of the people, and that he is strenuously striving to protect and to advance that welfare.

I trust that your deliberations here will, like your deliberations in the past, advance the unification and simplification of the law, and I trust that when we are through with our deliberations here and enter upon the broader field of the work of the Universal Congress of Lawyers and Jurists we may feel that we have a right to join in the prayer of Robert Burns, when he said

Then let us pray, that come it may,  
As come it will, for a' that,  
That sense and worth, o'er a' the earth,  
May bear the gree, and a' that.  
For a' that, and a' that,  
It's comin' yet for a' that,  
That man to man, the warld o'er,  
Shall brothers be for a' that.

The President then delivered the President's address.

*(See the Appendix.)*

The President:

The next order of business is the nomination and election of new members.

*(See List of New Members.)*

The Secretary:

I desire to announce, Mr. President, that I have received credentials of the following delegates.

*(See List of Delegates from State and Local Bar Associations.)*

The President:

The next order of business is the election of the General Council. It is usual to take a recess for a few minutes to enable delegates from the respective states to get together and



agree upon whom they shall name for members of the General Council.

A recess of five minutes was then taken, after which members of the General Council were elected.

*(See List of Officers at end of Minutes.)*

The President :

Next in order is the report of the Secretary.

John Hinkley, of Maryland, Secretary of the Association, read his report.

*(See the Report at end of Minutes.)*

The President :

The report of the Treasurer will next be submitted.

Frederick E. Wadhams, of New York, Treasurer of the Association, read his report.

The President :

The usual course is for the Treasurer's report to be received and referred to an auditing committee. It will take that course as a matter of custom, and the names of the members of the Auditing Committee will be announced later.

*(See the Report at end of Minutes.)*

The President :

We will now receive the report of the Executive Committee.

The report of the Executive Committee was read by the Secretary.

The President :

The report will be accepted and duly filed and printed in our minutes.

*(See the Report at end of Minutes.)*

Robert D. Benedict, of New York :

Do I understand aright that the Secretary read the name of Mr. Abner McKinley as a member elected by the committee?

The Secretary :

Yes, sir.

10 RESOLUTION CREATING COMMITTEE ON INSURANCE LAW.

Robert D. Benedict :

But he is dead.

The Secretary :

I was aware of that. He was elected a member of the Association, however, and so his name appears as elected and his death is noted in the report of the Obituary Committee.

Ralph W. Breckenridge, of Nebraska :

Mr. President, I wish to offer a resolution amending the Constitution so as to provide for the creation of a standing committee on Insurance Law and move the reference of the resolution to a committee of three, who shall report to the Association when the order of unfinished business is reached whether or not such amendment is desirable.

The President :

The Secretary will read the resolution handed up by the gentleman from Nebraska.

The Secretary (reading) :

*Resolved*, That Article III of the Constitution be amended by inserting near the end of the second paragraph, after the words " Copyright Law," the following words, " On Insurance Law."

Ferdinand Shack, of New York :

I second the motion.

The motion referring the resolution to a committee was adopted.

The President :

The Chair will appoint as the members of the committee authorized under this resolution :

Ralph W. Breckenridge, of Nebraska.

Rodney A. Mercur, of Pennsylvania.

George Whitelock, of Maryland.

A recess was taken until 2.30 P. M.

## AFTERNOON SESSION.

*Monday, September 26, 1904, 2.30 P. M.*

The President called the meeting to order.

New members were then elected.

*(See List of New Members.)*

The President:

It is always pleasant for American lawyers to meet a brother fresh from a great legal contest and to pay him appropriate tribute whether in that contest he was successful or not. We are to be favored now with an address, giving an account of the Alaskan tribunal and of the great case recently decided by it in England. One of our members, Hon. J. M. Dickinson, of Illinois, was a participant in that legal contest, and I have the pleasure of introducing him to you.

J. M. Dickinson, of Illinois, then read his paper on "The Alaskan Boundary Case."

*(See the Appendix.)*

M. A. Spoonts, of Texas:

Mr. President, I offer the following resolution and move that it be referred to the Executive Committee:

*Resolved*, That the second paragraph of section 13 of the by-laws be amended by adding thereto the following: *Provided further*, That the Executive Committee shall have the power to remit such back dues upon the payment by such member of the same dues as a new member is required to pay upon becoming a member of the Association.

B. Mason Ambler, of West Virginia:

I second the resolution.

The motion referring the resolution to the Executive Committee was adopted.

The Association then adjourned to Tuesday, September 27, 1904, at 10 A. M.

## SECOND DAY.

*Tuesday, September 27, 1904, 10 A. M.*

The President called the meeting to order.

New members were then elected.

*(See List of New Members.)*

Hamilton McWhorter, of Georgia :

To-morrow, Wednesday, has been set apart as Georgia Day at the Exposition. To-morrow evening a reception will be given to Georgia's Governor. In behalf of the Commissioners from Georgia, I am requested to invite the members of the American Bar Association and ladies to attend the reception in the Georgia State Building.

The President :

The invitation will be referred to the Executive Committee.

In this connection I wish to state that I am in possession of an invitation from the owners of the steamboat Corwin H. Spencer tendering the Association an excursion on the Mississippi River. Also, among other invitations received is one from the Anheuser-Busch Brewing Association to visit their establishment.

I desire further to make the announcement that at 9 o'clock to-morrow morning there will be an organ recital in this hall which will give way promptly for our meeting at 10 o'clock, and all the members of the Association are cordially invited to be present.

Gentlemen of the Association, it is a privilege of which I am extremely proud to introduce to you at this time Honorable Amos M. Thayer, United States Circuit Judge of the Eighth Circuit, who will read a paper on "The Louisiana Purchase, Its Influence and Development under American Rule," it being the annual address for this year.

Amos M. Thayer, of Missouri :

Mr. President and Gentlemen of the American Bar Association : I very much regret that owing to the condition of my eyesight and also the condition of my vocal organs I shall not

be able to read the paper which I had intended to read on this occasion. I therefore request your permission to allow the paper to be read by my friend, Judge Ferris, who has kindly consented to read it for me.

Franklin Ferris, of Missouri:

I cannot forbear expressing my regret that this paper is not to be read by its author. It is hardly necessary for me to say that my regret is not diminished for your sake and for his by the fact that the honor of reading the paper has been assigned to me. I do appreciate, however, the privilege of rendering even a slight and imperfect service to one whom we all love and honor.

The annual address was then delivered.

*(See the Appendix.)*

Fabius H. Busbee, of North Carolina:

I ask unanimous consent to introduce a resolution upon which I shall not ask action at present, but it will take such course hereafter as the Association may determine.

The President:

If there is no objection, the gentleman from North Carolina may offer his resolution.

Fabius H. Busbee:

The resolution that I desire to offer is this:

*Resolved*, That the Committee on Judicial Administration and Remedial Procedure shall be instructed to take into consideration the expediency of taking some action upon or giving forth some expression of its views upon the part of the American Bar Association to induce its members, and American lawyers generally, to exert their influence in their respective homes to suppress the evils of mob violence and that this committee be requested to report by resolution, memorial or otherwise, at the present session if practicable.

The President:

The gentleman from North Carolina having asked unanimous consent for the introduction of this resolution, and unanimous consent being granted, if there is no objection the

14 COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

resolution will go to the Committee on Judicial Administration and Remedial Procedure for report at this session.

Next in order are reports of standing committees, and the first of these is the Committee on Jurisprudence and Law Reform, of which Mr. Meldrim, of Georgia, is Chairman.

Robert D. Benedict, of New York :

The Chairman of our committee does not appear to be in the hall at the moment, and I am second on the committee. I would state that the committee has prepared a report, and I presume it has been distributed. Unless it is desired, I do not propose to take the time to read it, but would simply move the adoption of the recommendations of the committee.

Charles H. Bane, of California :

I second the motion.

Charles F. Manderson, of Nebraska :

It might be well to know what recommendations the committee makes.

The President :

Mr. Benedict, you may state briefly the recommendations made in the report of your committee.

Robert D. Benedict :

There were two matters referred to the committee: One being under the resolution of Judge Baldwin at the last meeting as to the sale of honorary degrees in law. The only person the committee found who sought to make sale of such degrees was a man then living in Tennessee, but who was compelled to leave that state and went to the District of Columbia, and the last heard of him was that he was under arrest there. I have noticed in the public press since that time that an order has been issued refusing him the further use of the United States mails. We do not consider that any further action in that matter is called for.

The subject of combinations or trusts, under the resolution introduced by Mr. McCrary, was considered by us and we concluded as follows: First, that under the clause of the

Constitution to regulate commerce Congress has no power to create corporations except those which have for their object the carrying on of exclusively interstate business. Second, that no such power as is contemplated by the resolution should be delegated by the states to Congress. Third, that we cannot recommend "that state taxation should be upon property actually within the state only." The property to which reference is made in the resolution must be personal, for realty is necessarily taxed under the laws of the state where located. Fourth, that we cannot recommend "that labor organizations should be relegated to national control under national incorporation."

The committee begs leave also to report in favor of the passage by Congress of an act entitled "An act to authorize the maintenance of actions for negligence causing death in maritime cases." This subject was before the American Bar Association in 1900. A bill had then been introduced in Congress by Mr. Boutell on that subject, and the recommendation of the committee in favor of that bill was adopted by the American Bar Association; but Congress took no action upon the bill. Thereafter the Maritime Law Association of the United States in New York took up the matter, and after much consideration by committees finally, in November, 1903, approved the bill. I may say that I know of my own knowledge that the bill has been very carefully considered by the Maritime Law Association, and our committee has reported in favor of a recommendation to Congress that the bill shall pass.

Charles W. Bates, of Missouri:

I do not understand subdivision two of the second subject relating to trusts. Under subdivision two I find the following words: "That no such power as is contemplated by the resolution should be delegated by the states to Congress." I do not know what the resolution is and therefore I rise for information.



Robert D. Benedict :

I have not with me the proceedings of the last meeting, but the Secretary can probably inform the gentleman what the resolution was.

William A. Ketcham, of Indiana :

I think I can answer the gentleman's question. The proposition was that the Constitution of the United States ought to be so amended as to confer upon Congress the power to regulate and control purely state institutions, and the committee was of the opinion that no such power ought to be exercised.

The President :

The report will be received if there is no objection, and the affirmative action will be upon the recommendations made by the committee.

William A. Ketcham :

I move the adoption of the report.

Frank Harvey Field, of New York :

There is a provision in this bill in section 1 limiting the amount of recovery in case of death by accident to \$5000. That limitation formerly prevailed in the State of New York by a provision of the state constitution, but at the time of the adoption of the new constitution in 1894 that provision was repealed, and since then recoveries have been had in some cases as high as \$100,000, and these recoveries have been sustained on appeal. It frequently happens that a man is killed who has a yearly income so large that \$5000 would be little compensation to his next of kin for his death, and it seems to me that it would be a foolish thing to put a provision of that kind in a national law affecting all maritime cases. I, therefore, move that the words "not exceeding in all the sum of \$5000" be eliminated from the recommendation.

William W. Dodge, of the District of Columbia :

I support that motion.

Robert D. Benedict:

May I say a word in reference to that proposition? That matter was very carefully considered by the Maritime Law Association. There are great varieties of limitations under the state statutes as to the amount of the damages in cases of death arising within the states. In the District of Columbia Congress has passed a law limiting the right of recovery to \$6000. It was urged upon the consideration of the Maritime Law Association that if we put in the bill a limitation of \$6000, which Congress had already adopted for the District of Columbia, a law with that limitation would be more likely to pass; but, on the other hand, those in the Maritime Law Association representing the maritime interests, which are largely to be affected by this measure, were very earnest that the amount should not exceed \$5000 for death occurring at sea, because unless such limitation was adopted, inasmuch as this act would put an additional burden upon maritime interests, all those interests would be combined to defeat the whole law. We therefore thought it was well to begin with a limitation of \$5000, which is the limitation in many of the states. It was our opinion that it was the wisest plan to insert that limitation, and I think that on reflection the gentleman will see that to strike out that clause would array against this bill very large and very important interests which would seriously jeopardize the passage of the bill.

Frank Harvey Field:

If the reasons advanced by the member of the committee are simply reasons of expediency and do not go to the actual merit of the question of the limitation in an action for death, it does not seem to me that the American Bar Association ought to favor a form of bill that is designed to meet possible objection from shipping interests. The experience of New York has been so illuminating on this subject since the revocation of the constitutional limitation of \$5000 that it seems to me the whole country will very soon take off any limitation from the amount of recovery in such cases. If there is a right.

of action which may amount to a large sum in the case of a person injured, certainly there should be no limitation against the proving of the actual loss to the next of kin by reason of the death of anyone through negligence. It seems to me, sir, that it would be a very narrow-minded and short-sighted action on the part of the American Bar Association to limit the recovery in an action of that kind. I hope my amendment will prevail.

William A. Ketcham :

This subject matter was one that when it came before this committee was not specially of interest to the members of the committee engaged in general practice, but we were assured and fully believed, and as far as I am concerned I have had no suggestion to change my belief, that that matter had been fully and carefully considered by the Maritime Law Association, and they ask that and they ask no more, and we were willing, therefore, to recommend what that association recommended. It would be well if in life we could all get all those things that we think we ought to have, but when we know by experience that we cannot get all the things that we think we ought to have some of us, as we grow older, have found that it was wise to try to get those things that we thought we could get. It was, therefore, that this committee believed that this measure carefully considered by the Association and recommended in its present form could be adopted, and that it would be wiser to recommend it than to recommend something that might be wiser, but which would not be adopted by Congress. So believing, it occurs to me, that the American Bar Association may concur in the action of the Maritime Law Association, and not follow off after the State of New York, if it be as the gentleman from New York states, that, having created a statutory right and imposed a statutory obligation, that state places no limitation or restriction upon the obligation. The power that can create can also limit, and I think it will be found that the vast majority of the states that have considered this question and have adopted such laws have not

as yet followed in the wake of New York and left no barriers up. If, after Congress shall have passed this law and conferred this right, it shall be determined hereafter by Congress or by this Association that it is wiser to enlarge that right it will be time enough to consider that then, but those who had considered and examined the matter carefully assured the committee that in their opinion, unless this limitation was placed upon it, the law could not be got through Congress, and this Association, as it seems to me, ought not to adopt the impracticable and unreasonable method of calling for more than they can get because they think, perchance, they ought to have it.

Thomas J. Morris, of Maryland :

I ask permission to say a few words on this subject. I think the objection to the limitation of the amount of recovery is a purely academic and impracticable one. I have had some experience in the trial of damage cases in admiralty, and I think it may be said that there is hardly one case in a thousand where \$5000 is not a fair and just compensation. More than that, there is a limitation upon the liability of ship owners which in most cases would reduce it to \$5000. It is admitted that there is now a defect in the federal admiralty law that should be cured, and it seems practicable to get Congress to pass this proposed act in its present shape. If the amount of the recovery should be unlimited, it may meet before Congress with the solid opposition of the ship owners, which would very possibly defeat it.

The President :

The question is upon the amendment offered by the gentleman from New York (Mr. Field) to strike out in section 1 the words "not exceeding in all the sum of \$5000."

The amendment was lost.

The President :

The question now recurs on the original motion made by the gentlemen from Indiana, Mr. Ketcham, that the report be received and its recommendations adopted.

Samuel C. Eastman, of New Hampshire:

I do not desire to object to receiving the report, but a motion to adopt the recommendations of the committee carries with it the adoption of section 3 on page 2 "that we cannot recommend that state taxation shall be upon property actually within the state only." The report goes on to say that "the taxation of personal property should be at the residence of the owner." So to decide would be contrary to the decisions of the Supreme Court, which has already decided that states may tax tangible personal property within their limits, even if the owner resides elsewhere. If now it is also within the scope of the state of the residence of the owner to tax that personal property, then double taxation constitutionally will necessarily follow, and double taxation certainly is a wrong, and I cannot agree to vote for such a proposition. Personal property for the purpose of taxation is often divided into tangible and intangible, and most of the disputes that have arisen have come from attempts to tax evidences of indebtedness, and on that there is a great difference of opinion. To adopt the report in its present form would commit the Association to something which is seriously questioned by many, and I hope by a majority of those present. The discussion of the subject would open a wide door, and therefore I content myself now with this expression of dissent, hoping that the Bar Association will not adopt the recommendation of the committee.

W. B. Swaney, of Tennessee:

I move that the question be divided. Let us vote first on the resolution recommending the passage of the bill. As I understand it, the motion really contemplates the adoption of the resolution in the first instance, and the question of the adoption of the report as a whole should come up separately.

Frank E. Gregg, of Colorado:

I second that motion.

The President:

The motion is made and seconded that the question be divided.

The motion for a division of the question was adopted.

The President :

Now the question is on the adoption of the resolution reported by the committee, approving the act to authorize the maintenance of actions for negligence causing death in maritime cases.

The resolution was adopted.

The question remains as to what shall be done with the rest of the report.

Frederick N. Judson, of Missouri :

I move that the third recommendation, on page 2, be recommitted to the committee. I agree with the gentleman from New Hampshire that it is an attempt to state an economic proposition of taxation in altogether too compact a compass, and I do not think it is the province of this Association to deal with economic questions in the adjustment of taxation that may well perplex economists. I therefore move that it be recommitted to the committee.

Theodore Sutro, of New York :

I second that motion, and in doing so I desire to say that in my opinion the adoption of this recommendation of the committee would give rise to confusion. In many of the states, notably in New York, we have a special statute which has existed for years taxing specifically capital invested in the state by non-residents, and if the American Bar Association adopts a recommendation of this kind it will conflict directly with the statutes of many states. Moreover, this question has been carefully considered by the various commissioners that have been appointed in the different states, and the conclusion has been reached, and it has also been declared by the Supreme Court of the United States, that under certain circumstances it is desirable for the purpose of preventing evasion of taxation that the personal property of non-residents of a state should be taxed.

P. W. Meldrim, of Georgia :

I am sorry I was not present when the report of the committee was read. I may say, sir, that the committee has no objection to a recommitment of this matter if by recommitment any useful purpose may be subserved. With reference to the objection raised that the Association should not deal with an economic question, it must be remembered that the question was referred to your committee by resolution of this body ; and, therefore, it became the duty of the committee to consider and report upon it. The resolution referred to the committee, so far as it is relevant to the matter now before us, was : " That state taxation should be upon property actually within the state only." Now mark the proposition submitted : " That state taxation should be upon property actually within the state *only*." No reference was intended to taxation upon real estate, for real estate is necessarily governed by the law of situs. Therefore, the question before your committee was this : Should the committee recommend, as proposed by the resolution, that taxation on personal property should only be in accordance with the law of the place where the personal property might be found ? The general law is that personalty follows the person, and rather than recommend a radical change we deemed it the better policy to adhere to the old rule. The evil sought to be remedied was that of the tax payer putting his personal property, particularly securities, out of the jurisdiction of the state and the reach of the tax gatherer. To recommend that " state taxation should be upon property actually within the state only " is to require the tax collector to locate the personalty in the state. If the correct view be that the tax gatherer shall lose sight of the tax payer, and shall seek all over the American union for securities that may be hidden, then let this Association refuse to adopt the report of the committee. If, on the other hand, the view of your committee be correct that personal property follows the person, and that the state has jurisdiction for tax purposes wherever it has jurisdiction over the person of the tax payer,



then let the Association so declare and adopt the report of the committee.

There is no objection on the part of the committee to having the subject matter recommitted to it, but it is doubtful if, under the terms of the resolution, we can do anything better than we have done.

Fabius H. Busbee, of North Carolina :

The difficulty seems to be that the committee has attempted to state in a few sentences the law governing the situs of personal property for taxation, while it would require pages to make an accurate statement, however condensed. Certain kinds of personal property naturally follow the person of the owner. Other personal property has a situs of its own. If the Chairman owned in Missouri a herd of cattle which had never been out of the state, would not such personal property be taxable in Missouri instead of in the state of the residence of the owner? If he owned a share of stock, personal property, in a manufacturing plant in another state, would not the property be taxable where it was located, and not merely where the owner of the share resided?

In the broad statement of the report, therefore, all sorts of inconsistencies will arise. Without going into the infinite ramification of the doctrine of the taxation of personal property, I hope this part of the report will be again referred to the committee for further consideration.

James O. Crosby, of Iowa :

The gentleman who has preceded me has in part advanced the idea that I wished to advance. There are two kinds of personal property, goods and chattels, which would properly come under this third section. State taxation should be placed upon the goods and chattels within the state, but it is a general rule, I believe, that so far as moneys and credits are concerned the situs of taxation is the residence of the owner. It seems to me that this recommendation is, therefore, somewhat untrue. We should recognize the two kinds of personal

property—that which consists of goods and chattels on the one hand, and on the other moneys and credits, which follow the residence of the owner.

Robert D. Benedict, of New York :

May I say for the information of the Association that the resolution as referred to the committee was that state taxation should be upon property actually within the state only. The committee considered that, and stated as its determination that “we cannot recommend that state taxation should be upon property actually within the state only.” Now the motion to recommit the third section of the report would carry back to the committee a reconsideration of that proposition. I do not believe that this Association will differ substantially on that part of the report of the committee. The questions which have been discussed here seem to arise on the subsequent article and clause of the third proposition, and if those were referred back to the committee I do not think there would be any objection.

Fabius H. Busbee :

Could you not strike out the two clauses, then, which follow that?

A. J. McCrary, of New York :

I am responsible for the wording of this resolution—not in the sense that some have discussed it, but it was worded in the form that it is for the reason that in the courts of the State of New York to-day there are questions being discussed relating to the taxation of property belonging to corporations, property which is absolutely taxable and is absolutely taxed in other jurisdictions, in other states, property belonging to a corporation which never had its situs within the State of New York. Therefore the question arose, and is now before the Court of Appeals of the State of New York, whether a corporation which has property in half a dozen different states, which property is now being taxed by each of those several states, shall also be taxed in the State of New York for the entire

property covered by its corporate franchise. The purpose of this resolution was simply to fix the character of property which is not at any time within the situs of the owner, but is used exclusively within and is entirely within some other state, while the owner of the property has its situs in the State of New York. Now as the law has been administered—the state in which the property is located and where it is used has taxed the property, and the State of New York taxes the owner with its whole property in New York; thus the same property is taxed in the several states where located and also taxed in New York. It is property which never was and never will be in the State of New York. It is only necessary to state that proposition and every honest-dealing man will realize the injustice of it. I have therefore great faith that when the real spirit and purpose of this resolution is understood the language used in it will not be found subject to the criticism made upon it. It was intended that this property should be taxed in the state where it is located. It is already taxed there, and if it can, therefore, by virtue of the situs of the owner being in the State of New York, be taxed also in New York, then it is double taxation.

James O. Crosby:

May I ask the last speaker a question? This says that personal property shall be taxed under the laws of the state of the owner. I live in Iowa. Suppose I buy a mule in Missouri, shall I go back to Iowa and leave that mule here to be taxed under the State of Missouri?

A. J. McCrary:

I am not responsible for the report and the mule comes under that. I am speaking of the resolution now.

W. B. Swaney:

It strikes me that this resolution is referred to the wrong committee. The evil we are attempting to correct by this resolution is one that belongs to the Committee on Uniform State Laws and should be referred to that committee. To

illustrate: This evil arose a few years ago when the great mill owners were contemplating removing their manufacturing establishments to the South, and the question of organizing new corporations and dividing their property and their capital arose in a very pointed way. We had the evil pointed out in Tennessee and we cured it. The question is one of taxing intangible property. The question here is whether or not personal property should be taxed according to the laws of the state in which that property is situated, and the committee reports that it does not recommend the adoption of that resolution. In other words, that resolution would eliminate the question of intangible property. In Tennessee we had no law in reference to foreign corporations which protected them. They were subject at that time to double taxation to the full extent of their capital stock under the general law. We provided that when foreign corporations come to Tennessee they shall only be taxed pro rata with the actual value of the property brought into the state, thereby dividing the question of the intangible property that they brought into the state.

I think this would be corrected by a reference of this part of the report to the Committee on Uniform State Laws.

P. W. Meldrim:

In order to avoid unnecessary discussion, if the gentleman who moved to recommit will permit it I will say that it will be agreeable to the committee to strike out the two clauses to which objection has been made, as all we desired to do was to reach a conclusion.

Frederick N. Judson:

I do not believe in mutilating a report of a committee. The real difficulty here is, as stated by the gentleman from North Carolina, that the committee has undertaken to deal with a complicated economic question that has perplexed economists growing out of conflicting sovereignties in exercising the law of taxation, and the subject should therefore be considered by the Committee on Uniform State Laws. I

therefore ask leave to withdraw my motion to recommit and then to move that this part of the report be referred to the Committee on Uniform State Laws.

The President :

Is there objection to the gentleman's withdrawing his motion to recommit? There being no objection, the motion to recommit made by the gentleman from Missouri is withdrawn.

Frederick N. Judson :

I now move that this part of the report be referred to the Committee on Uniform State Laws.

Daniel Fish, of Minnesota :

I second the motion.

The motion was adopted.

The President :

The question now recurs upon the adoption of the remainder of the report.

Henry W. Palmer, of Pennsylvania :

I would like to inquire whether the adoption of the report will commit this Association to the conclusions reached in the first and fourth paragraphs on page 2?

The President :

Yes, sir; it will.

Henry W. Palmer :

Because, if the American Bar Association wishes to go on record as stated in those paragraphs, it seems to me the subject ought to be discussed at least. First, it seems to be assumed in the first paragraph that Congress has the power to create corporations the object of which would be the carrying on exclusively of interstate commerce. There are people who dispute the power of Congress to do that. Secondly, the question arises, supposing that Congress has the power to create corporations the object of which would be exclusively to carry on interstate commerce, would that power include the right to authorize such companies to do a manufacturing business? Thirdly, upon a subject so wide and so large as the right of

Congress to regulate the trusts it seems to me that the American Bar Association ought not to commit itself in the manner proposed without some little discussion. I am one of those who believe that Congress has the right to incorporate companies for the purpose of carrying on interstate commerce, and also that it has the right to give such companies the power to manufacture in any state in which they may please to locate any article which enters into interstate commerce. I believe the time will come when all corporations engaged in interstate commerce will be compelled to take their charters from the federal government, and when that time arrives there will be no doubt about the power of Congress to regulate them. The regulating hand of Congress will be laid upon such corporations that now seem to enjoy a great deal of odium. The point I wish to make is this, that upon a subject so comprehensive and about which legal minds have arrived at different conclusions this Association ought not to put itself upon record without some discussion. Therefore, I move that the balance of the report be received and laid on the table.

The motion was seconded.

The President:

The motion before the house is that that part of the report relating to combinations and trusts which has not been referred to the Committee on Uniform State Laws by the vote just taken be received and laid on the table.

Robert D. Benedict:

I would like to correct the statement of the motion as the Chair has just made it. There is no direct reference to trusts in the resolution which was referred to our committee.

Henry W. Palmer:

I call attention to the statement on the first page of the report.

The President:

The Chair thinks that it stated the question before the house correctly. All of that part under subdivision II except such

as has been by the vote just taken referred to the committee on Uniform State Laws be now received and laid upon the table. I have nothing but the report before me, and not the resolution, and the committee's report puts this under the head of "Combinations and Trusts."

The motion was then adopted.

The President:

The question now recurs upon the adoption of the rest of the report.

The rest of the report was adopted.

The President:

The next report is from the Committee on Judicial Administration and Remedial Procedure.

A. J. McCrary, of New York:

Owing to the fact that some of the members of this committee were in Europe and others on vacations far from home, we were unable to have such a conference over the report as would enable us to present it and have it printed. I have a written report, which, under the rules, I suppose, may or may not be received, but if received it ought to be read, and I ask consent to read it.

The President:

The gentleman from New York asks unanimous consent to read the report which has not been printed. The Chair understands unanimous consent is given, and the gentleman may proceed.

A. J. McCrary:

A resolution was received by the Association this morning referring to this committee some questions relating to the evils resulting from mob violence. Our committee have covered that subject in our report, which I will now read.

The report of the committee was then read.

*(See the Report in the Appendix.)*

Charles Claflin Allen, of Missouri :

I move that the report be received and filed.

The motion was seconded and adopted.

The Committee on Legal Education and Admissions to the Bar. Judge Sharp, of Baltimore, is Chairman of that committee.

George M. Sharp, of Maryland :

I have no report to present.

The President :

Next in order is the report of the Committee on Commercial Law, of which Mr. Logan, of New York, is Chairman.

Walter S. Logan, of New York :

The Committee on Commercial Law presents a majority and minority report. Mr. Whitelock will present the majority report, after which I will read the minority report.

The majority report of the committee was then read.

*(See the Report in the Appendix.)*

Sigmund Zeisler, of Illinois :

It is now a quarter of one, and the minority report covers nineteen printed pages, and I therefore move that we adjourn until half-past two o'clock.

John Morris, Jr., of Indiana :

This report has not been printed in time to receive consideration under the by-laws. I therefore submit that the consideration of the report be postponed until the annual meeting next year with leave to the committee to amend or supplement the report if they see fit.

The President :

The Chair must rule that that motion would not be in order until after Mr. Logan has presented his minority report.

Recess was taken until 2.30 P. M.



## AFTERNOON SESSION.

*Tuesday, September 27, 1904, 2.30 P. M.*

The President called the meeting to order.

The President :

The Secretary will make announcements of committees appointed.

The Secretary :

The President has appointed as Committee on Auditing the Report of the Treasurer :

Charles Martindale, of Indiana.

Edward B. Whitney, of New York.

As the Committee on Publications :

George Whitelock, of Maryland.

Edward Avery Harriman, of Connecticut.

Charles Claflin Allen, of Missouri.

Francis B. James, of Ohio.

M. A. Montgomery, of Mississippi.

The President :

The next order of business is the paper by Benjamin F. Abbott, of Georgia, on "To what Extent will a Nation Protect Its Citizens in Foreign Countries?"

Benjamin F. Abbott, of Georgia, then read his paper.

*(See the Appendix.)*

The President :

I want to avail myself of just a moment's time before Mr. Logan presents the minority report of the Committee on Commercial Law to say on behalf of the Executive Committee that last fall, not long after the adjournment of our annual meeting, we transmitted through the American Ambassador at London, Mr. Choate, an invitation to Sir Robert B. Finlay, Attorney General of England, asking him and Lady Finlay to be our guests during this meeting, which was quite promptly accepted; but later we received word from Mr. Choate that it was impossible for him to come. I desire to read now the Attorney General's letter to Mr. Choate upon the subject, so that it may get in our records.

HOUSE OF COMMONS,  
July 4, 1904.

MY DEAR MR. CHOATE :

You will recollect that when I told you I hoped to have the honour of availing myself of the invitation of the American Bar to address them at St. Louis I added that it was quite possible that circumstances might put it out of my power to come.

I had hoped that I should not be thus prevented, but I much regret to find that the exigencies of public business this year absolutely forbid my further entertaining the hope of coming.

I felt it my duty to consult the Secretary for Foreign Affairs and the Lord Chancellor on the point, and they were both clear that it was impossible for me consistently with my public duties to visit America this year. In this the Prime Minister entirely concurs.

You will, I know, understand the circumstances and sympathize with me in this disappointment. I regarded the invitation as a very great honour, and both Lady Finlay and myself had looked forward to our visit with great pleasure and interest. It is, however, now impossible, and I can only ask you to express to the American Bar my sense of their kindness and my great regret that circumstances make it impossible for me to avail myself of it.

Yours very sincerely,

R. B. FINLAY.

New members were then elected.

*(See List of New Members.)*

The President :

Mr. Logan now has the floor to present the minority report of the Committee on Commercial Law.

Walter S. Logan, of New York, then presented the minority report of the Committee on Commercial Law.

*(See the Report in the Appendix.)*

The President :

Gentlemen, the reports are before you for your action.

Frederick N. Judson, of Missouri:

As the report of the committee recommends no action by the Association, I rise to move that the report of the committee, with the expression of the views of the minority, be received and filed.

In that connection, before taking my seat, as one who signed the majority report, I wish to say that the statement of our distinguished friend, the Chairman of the committee, that he had his minority report ready the day following the receiving of the majority report makes me regret that he did not find time to submit his authorities to the majority of the committee; or he must have been very diligent in preparing them in a single day. It should be clearly understood what the issue between us is. The majority of the committee did not understand that they were instructed to find remedies for the enforcement of the so-called anti-trust act of Congress. They did understand that they were asked to consider and find remedies in legislative form for any combination that may threaten commercial intercourse. If gentlemen will examine the cases cited—and I do not care to go beyond the cases which our Chairman has himself presented in his minority statement—they will find the law to be simply this: That a Circuit Court of the United States under its general equity powers, where the conditions for the exercise of equity jurisdiction exist, such as irreparable injury or the prevention of a multiplicity of suits, will exercise that jurisdiction and protect the suitor against unlawful combinations in commerce of any kind. Of course just here comes the question of the effect of this proposed amendment of our Chairman, and it should be clearly understood. As the law stands now, the Circuit Court of the United States will only have such jurisdiction when the suit is brought on the equity side of the court, and not based upon a federal statute or claim of federal right where the necessary conditions of diverse citizenship exist. If you want to bring a suit against a citizen of your own state for relief against a combination threatening commercial intercourse, whether of labor or

of capital, you can go of course into the Circuit Court of the United States if you have non-resident parties, or into the State court if you have not. Now the question squarely presented to the committee was this: Is there such a public emergency to-day as calls for the increase of the powers of the federal courts in granting injunctions so that we can enable a federal court to grant an injunction to protect a man in case of irreparable injury to interstate commerce when the parties are citizens of the same state? Our Chairman seems to think that there is, and I am certainly surprised to find such a disciple of Jefferson as our distinguished Chairman assuming the fatherhood of a bill to increase the powers of the federal courts in granting injunctions. The majority of the committee did not feel that there was any public emergency calling for that extension of the powers of the federal courts. If you will examine the case of *Blindell vs. Hagan*, reported in 54 Fed. Rep. 40, and which afterwards was affirmed by the Circuit Court of Appeals in the Louisiana Circuit, you will find that the court, in a passage which our Chairman has quoted, denied the jurisdiction as to the resident defendants, but sustained it on general equity principles as to the non-resident defendant, and granted an injunction. If our Chairman's proposed amendment had been in force, the court would have retained jurisdiction against the resident defendants. Our friend, the Chairman, on page 14, cites *Gulf Railway Co. vs. Miami S. S. Co.*, 30 C. C. A. 142. There you will find the Circuit Court of Appeals states the law that the Circuit Court of the United States should always uphold jurisdiction to protect the suitor in any case of an unlawful combination in commerce when the necessary facts of equity jurisdiction exist. When Congress passed the Sherman Act, so-called, in 1890, it was thought that when it gave the individual suitor the right to have threefold damages and gave the federal court the power to grant an injunction in a summary way at the instance of the government, that the right to the extraordinary relief to protect the citizen by injunction could

safely be left where the Constitution and laws of the United States had left it—under the jurisdiction as to citizenship which regulates the powers of the federal court. We did not think there was an emergency calling for the extension of that jurisdiction. So I would suggest that if the Association should in its wisdom approve the views of our distinguished Chairman they should amend the act so that it would read, on page 5: An act to provide additional remedies for violation of laws against unlawful combinations by extending the powers of the federal courts in granting injunctions against citizens where there is no diverse citizenship.

There is another point to be considered in this proposed amendment. It is intended to be very comprehensive, and it provides that any person specially injured may maintain a suit for injunction as well as for damages; that is, the injunction and the damages for a tort are to be awarded in the same suit. I make this statement because we had no opportunity to see the authorities cited by our distinguished Chairman when our report was prepared.

As to the second bill recommended, I have only this to say: he may be right, and he may not, but I am inclined to think that that remedy might more appropriately have been presented to one of the sections of the congress which met here last week. Some present might think that a reform in our tariff laws might be an effective remedy for combinations in commerce, and yet I do not think that would be a proper subject to bring before such a body as this. We are going out of the province of the Bar Association when we deal with such questions as the effecting of social reforms through the exercise of the power of taxation.

As the majority report makes no recommendation, I have risen to make the simple motion that the report of the committee, with the expression of the views of the minority, be received and filed.

John Morris, Jr., of Indiana:

When the Association receives a report in proper form from one of its committees, it seems to me superfluous to pass a motion that the report be received. At least, the passing of such a motion could not mean that the report was approved, for the Association could not well act upon a report until it had received it. I judge from Mr. Judson's remarks that he assumes that the adoption of his motion to receive and file the majority and minority reports of the Committee on Commercial Law will amount to an approval of the majority report and disapproval of the minority report. In order that there may be no misunderstanding about the matter, I wish to object to this motion as being out of order, and to any further consideration of these reports, because, as they show upon their face and as I know to be the fact, they have not been printed and distributed to members according to the by-laws of the Association.

George Whitelock, of Maryland:

I would like the distinguished gentleman from Indiana to read the by-law upon which he relies.

John Morris, Jr.:

I will do so, sir.

"All committees may have their reports printed by the Secretary before the annual meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed, together with a draft of bill embodying the views of the committee, whenever legislation shall be proposed. Such report shall be distributed by mail by the Secretary to all the members of the Association at least fifteen days before the annual meeting at which such report is proposed to be submitted. No legislation shall be recommended or approved except upon the report of a committee."

At least one of these reports contains "recommendation for action on the part of the Association," and as the reports must be considered together it is clear, it seems to me, that

printed copies of the reports should have been mailed to the members of the Association at least fifteen days before this meeting.

The President :

Do I understand the gentleman from Indiana to make an amendment ?

John Morris, Jr. :

I make the point of order that as the minority report contains a " recommendation for action on the part of the Association " and must be considered with the majority report, and as the reports were not printed and distributed to the members fifteen days before this meeting, they cannot now be acted upon.

The President :

The Chair must rule that the majority report, together with the views of the minority, is before the Association for disposition.

John Morris, Jr. :

I move, then, that the consideration of these reports be postponed until the next annual meeting of the Association.

The motion was seconded.

Walter B. Douglas, of Missouri :

Will the Chair state the question before the house ?

The President :

The question before the house is this : The gentleman from Missouri (Mr. Judson) moves that the report of the committee be received and filed, together with the report of the member constituting the minority of the committee. To that motion the gentleman from Indiana (Mr. Morris) offers an amendment that the consideration of the report of the committee be postponed until the next meeting of the Association. Therefore, the question will be put upon the amendment.

John Morris, Jr. :

Mr. President, I have put my amendment in writing and it is as follows : That the consideration of the report of the

Committee on Commercial Law be postponed until the next annual meeting of the Association, with leave to the committee to amend or supplement the report, provided that any amended or supplemental report shall be printed and distributed to members as required by the by-laws.

Edward Q. Keasbey, of New Jersey:

I would ask the gentleman to qualify his proposition—

Charles F. Manderson, of Nebraska:

May I interrupt the gentleman from New Jersey to ask that there be read from the desk that part of our by-laws or Constitution that is referred to by the gentleman from Indiana?

Edward Q. Keasbey:

I was only going to suggest that the gentleman from Indiana qualify his proposition by putting in the words "inasmuch as the report has not been printed and distributed" it be deferred until the next meeting.

John Morris, Jr.:

I accept that.

Charles F. Manderson:

I ask that the provision with reference to the printing of reports at some time before the annual meeting of the Association be read.

The President:

The Secretary will read it.

The Secretary (reading):

"All committees may have their reports printed by the Secretary before the annual meeting of the Association; and any such report containing any recommendation for action on the part of the Association shall be printed, together with a draft of bill embodying the views of the committee whenever legislation shall be proposed. Such report shall be distributed by mail by the Secretary to all the members of the Association at least fifteen days before the annual meeting at which such report is proposed to be submitted. No legislation shall be recommended or approved except upon the report of a committee."



The President :

The question is upon the amendment offered by the gentleman from Indiana.

William A. Ketcham, of Indiana :

I would suggest that in lieu of the amendment the word "resolved" be left out and the word "and" be substituted. It will then appear in the motion of Mr. Judson that the report be received and placed on file and that the consideration of it be postponed.

John Morris, Jr. :

I will accept that.

The President :

That will practically be a substitute.

William A. Ketcham :

It is an addition to the motion of the gentleman from Missouri. He moved that the reports be received and placed on file, and the amendment, if adopted, would add "and that the consideration thereof be postponed until next year."

Edward Q. Keasbey :

I understand that the gentleman from Indiana accepted my suggestion ?

John Morris, Jr. :

Yes, and I accept this last one also.

Edward Q. Keasbey :

I do not want it to appear that we are not ready to discuss this question now.

The President :

The Secretary will read the resolution as it stands in its amended and substituted form.

Frederick N. Judson :

I would like to have a ruling of the Chair upon the effect of the motion.

The President :

The Chair will not rule upon that at present. It is the custom of the Chair not to cross a bridge until he comes to it. The Secretary will proceed.

The Secretary :

The resolution originally offered was :

*Resolved*, That the majority and minority reports of the Committee on Commercial Law be received and filed.

Then Mr. Morris moved to add :

And that, inasmuch as the reports were not printed and distributed fifteen days before the meeting, consideration of the reports be postponed until the next annual meeting of the Association with leave to the committee to amend or supplement the report, provided any such amended or supplemental report be printed and distributed to members as required by the by-laws.

The resolution was adopted.

The President :

In the judgment of the Chair, this vote carries with it the whole matter.

Next in order is the report of the Committee on International Law, of which Mr. Wheeler, of New York, is Chairman.

The report of the Committee on International Law was then presented by Everett P. Wheeler, of New York.

*(See the Report in the Appendix.)*

Everett P. Wheeler, of New York :

The committee instructs me to move the adoption by the Association of the following resolutions :

*Resolved*, That the American Bar Association concurs in the resolutions adopted by the National Arbitration Conference at Washington, D. C., January 12, 1904.

*Resolved*, That a copy of this resolution be transmitted to the Secretary of State of the United States.

The resolutions were seconded and adopted.

The President :

The Committee on Grievances is next in order.

Cortlandt Parker, of New Jersey :

I feel like apologizing to you for coming with a report which will occupy, perhaps, two or three minutes of your time after the very interesting report to which we have just listened. I am Chairman of the Committee on Grievances, which committee is composed of five former Presidents of this Association, and this is our first appearance with a report.

The report of the Committee on Grievances was then read.

*(See the Report in the Appendix.)*

Cortlandt Parker :

I move the adoption of the report.

The motion was seconded.

Sigmund Zeisler, of Illinois :

Before the question is put, Mr. President, on the motion to approve this report, I should like to occupy the attention of the Association for a few minutes. In spite of the fact that the Committee on Grievances is composed of perhaps as illustrious gentlemen as the Association boasts, I beg to express a doubt as to the propriety of adopting this report. The committee does not state clearly what the grievance was of which Mr. Davis complained. It might have taken us into its confidence a little bit. However, from the fact that they say that if certain criticisms should be made by the Association upon the action of the Hawaiian Court this Association itself might be guilty of contempt of court, I infer that the case of Mr. Davis was one of contempt of court. But wherein that contempt consisted and what his grievance was, what the injustice was to which Mr. Davis was subjected, we are not told. However, my objection is not so much to the conclusion arrived at by the committee that no action should be taken by this Association as it is to the reasons given by the committee for its failure to make any recommendations. The committee say that it is very hard to answer the question as to what grievances the Committee on Grievances of this Association should consider, and they proceed to enlighten us negatively as to what it is not within their province to consider. They

have taken the trouble to inform us that, for instance, the grievance which arises from differences in the legislation of various states regarding marriage and divorce is not such a grievance as would come within the province of the committee. It seems to me that it was very unnecessary to tell us that. It seems to me that it is pretty well understood what grievances would come within the purview of the Committee on Grievances. Now, it is very possible that in the precise case about which we know nothing there was a usurpation of power on the part of the Hawaiian judge. In that event, if my surmise were rightly based upon the fact, it seems to me it would be proper for this Association to adopt some resolution disapproving of the conduct of the judge. The committee say that private grievances, in their opinion, cannot engross the attention of the Association, but it seems to me that every grievance which really would come properly before the Committee on Grievances would involve a private wrong. Imagine, for instance, that one of the members of this Association should be guilty of disloyalty to a client, of unprofessional conduct of a grievous character, and that the client should report his grievance to the Committee on Grievances. Would it not be within the province of the Committee on Grievances to recommend that that man be deprived of his privilege of membership here?

So that it is the reasoning of the committee in this report and some of the statements which they make in it which I think are not correct that have led me to rise and object to the adoption of the report.

The President:

Is there further debate? If not, the motion to receive and approve the report will be put.

The motion was adopted.

The report of the Committee on Obituaries is next in order.

The report of the Committee on Obituaries was read by the Secretary as Chairman of the committee.

*(See the Report in the Appendix.)*

The President:

Next in order is the report of the Committee on Law Reporting and Digesting.

The report was read by Edward Q. Keasbey, of New Jersey.

*(See the Report in the Appendix.)*

Ralph W. Breckenridge, of Nebraska:

I concur in the report to the extent that it calls attention to what might be done by the judges of many of our courts if they would eliminate from their opinions much that is useless and pads the reports, and I am of the opinion that if their attention was sharply called to the views entertained by the Bar of the United States they themselves could and would do very much to minimize the evil of the multiplication of reports which now burden our shelves.

I am not in favor of conferring upon judges the discretion to select from their opinions those which are to be officially reported and those which are not to be officially reported, and believe it unwise for the opinions of any court of last resort to be buried. The Bar must have access to the opinions filed in all cases decided in courts of last resort. The opinions of courts which Mr. Keasbey refers to as courts of first instance may be very helpful in many cases, but they have not the value of the opinions of courts of last resort, and it is not necessary that any considerable portion of such opinions should be published.

My dissent from the views of the majority of the committee is upon their proposition to give the judges discretion to select from among their opinions those which should be reported and those which should not be reported.

Charles Borchertling, of New Jersey:

I move that the report be accepted and filed.

The President:

Unless there is objection, it will take that course.

The Association then adjourned to Wednesday, September 28, 1904, at 10 A. M.

44 RESOLUTION APPROVING ARBITRATION CONFERENCE.

THIRD DAY.

*Wednesday, September 28, 1904, 10 A. M.*

The President called the Association to order.

New members were then elected.

*(See List of New Members.)*

The President :

The Secretary calls my attention to the fact that this makes 198 new members elected at this meeting.

Ferdinand Shack, of New York :

We all heard yesterday with pleasure the valuable report of the Committee on International Law. Mr. Wheeler called attention to the prominent part taken by this Association in the advocacy of international arbitration and to the resolutions adopted on the subject in 1896, 1897 and 1899, and he also made mention of the encouraging events of the present year, the meeting of the Inter-Parliamentary Union in this city and the International Peace Conference to be held in Boston in October. At the time that report was prepared no doubt the very important action of the Inter-Parliamentary Union had not yet been taken. We are all aware of what that body has done, and we may look forward to very great progress in the movement for the settlement of controversies without resort to arms. I beg leave to offer the following resolution :

*Resolved*, That this Association hereby expresses its deep gratification at the steps recently taken by the Inter-Parliamentary Union toward the settlement of controversies between nations in the same manner as disputes between individuals are settled, that is, by judgment in accordance with recognized principles of law, and this Association records its great satisfaction at the announcement by the President of the United States of his intention to comply with the request made to him by the Inter-Parliamentary Union that he invite the nations to a conference.

The resolution was seconded and was adopted.

The President :

The next order of business is the report of the Committee on Patent, Trade-Mark and Copyright Law, of which Mr. Wetmore, of New York, is Chairman.

William A. Ketcham, of Indiana :

I think Judge Taylor is the only member of that committee present, and he is not in the hall at the moment, and I would suggest that the report of that committee be passed for the present.

The President :

The Chair is proceeding a little prematurely, for these reports come up under the head of unfinished business. The first business of the morning should be a report from the General Council on the nomination of officers.

Amasa M. Eaton, of Rhode Island, Chairman of the General Council :

The General Council have the honor of reporting, recommending the election of the following officers of the Association :

For President: Henry St. George Tucker, of Virginia.

For Secretary: John Hinkley, of Maryland.

For Treasurer: Frederick E. Wadhams, of New York.

For members of the Executive Committee to be elected :

P. W. Meldrim, of Georgia ;

Platt Rogers, of Colorado ;

M. F. Dickinson, of Massachusetts ;

Theodore S. Garnett, of Virginia ;

William P. Breen, of Indiana ;

they being the present incumbents. Also the following Vice-Presidents and members of the various Local Councils, which I will ask the Secretary to read.

The list of Vice-Presidents and members of Local Councils was read by the Secretary.

The President :

Under the rule these nominations will lie over until we have disposed of the rest of the business before the meeting.

We will now listen to the report of the Committee on Uniform State Laws, of which Mr. Eaton is Chairman.

Amasa M. Eaton, of Rhode Island, then read the report of the Committee on Uniform State Laws.

*(See the Report in the Appendix.)*

Charles F. Libby, of Maine :

I move that the report be received and the recommendations adopted.

The motion was seconded and was adopted.

William L. January, of Michigan :

About ten years ago the American Bar Association held an annual meeting in Detroit and many gentlemen here who attended that meeting well remember the delightful atmosphere and enjoyable breezes as compared with the heat of the past two days in St. Louis. I have received a communication from the Mayor of the city of Detroit extending an invitation to this Association to meet there in 1905. I have also received a communication from the President of the Detroit Bar Association extending an invitation and from the President of the State Bar Association co-operating with the Detroit Bar Association. In behalf of the Board of Commerce, the largest board of its kind, perhaps, in the Middle West, I have an invitation urging this Association to do the city of Detroit the distinguished honor of meeting there in 1905. I herewith present the letters and invitations and ask that the same may be referred to the Executive Committee. I can only add that we hope you will accept the hospitality of Detroit and come there next year.

The President :

The matter will be referred to the Executive Committee.

Amasa M. Eaton, of Rhode Island :

I wish to state that the eastern members of the Association earnestly desire the Association to meet at Narragansett Pier, in Rhode Island, next summer. It is a delightful spot, and lawyers from the West and from the South and from the interior of the country will be charmed with Narragansett Pier.



The President:

This invitation will also go to the Executive Committee.

W. B. Swaney, of Tennessee:

On behalf of Tennessee I desire to extend an invitation to the Association to meet at the famous Lookout Mountain. We have erected on top of that magnificent mountain a convention hall, and there are ample accommodations for all.

The President:

That invitation also will be referred to the Executive Committee.

I will call for the report of the Committee on Indian Legislation.

Everett E. Ellinwood, of Arizona:

I have the honor to be the representative of the committee to day. The report of the committee is printed and need not be read.

Willis Van Deventer, of Wyoming:

I move that the report be received and filed.

The motion was seconded and was adopted.

The Committee on Penal Laws and Prison Discipline. John H. Stiness, of Rhode Island, is chairman of that committee.

In the absence of the Chairman, the report was read by Martin Dewey Follett, of Ohio.

*(See the Report in the Appendix.)*

Martin Dewey Follett:

I move that the recommendation of the committee, that we endorse the proposition of the continuance of the professional study of delinquents, be approved.

Joseph R. Edson, of the District of Columbia:

I second that motion.

The President:

The question is on the filing of the report and the adoption of the specific resolution recommended by the committee.

Joseph R. Edson, of the District of Columbia :

I understand that this resolution has been adopted by ninety or more associations of either a state or national character. These associations are of a legal, religious or educational character. Now I desire to state that the main purpose of the work to which this resolution has reference is the study of the causes of crime, pauperism, defectiveness and other forms of abnormality with a view to lessening or preventing them, such study to be conducted by the best methods known to science and sociology. The work is fundamentally humanitarian. Our country pays out hundreds of thousands of dollars for the erection of monuments and for the study of rocks, plants and animals. It would seem proper that it pay out a few thousand dollars to study in a rigid, scientific way its greatest enemies—the criminal and other abnormal classes. The abnormal classes cost this nation more than five times as much as the total expenses of the federal government, yet the government gives little or nothing for scientific investigation of the causes and conditions of the evils involving this enormous expense with a view to lessening this expense by lessening these evils. In addition to the general scope of the work a few things might be mentioned desirable to find out: (1) What physical and mental characteristics may be common to reformatory inmates and unruly children in schools? (2) What physical characteristics may be common to the feeble-minded and dull children in schools? (3) The physical and mental differences between habitual criminals and criminals in general. Such a knowledge would make it possible to know about children in advance and better protect them from evils. In the case of the criminals such knowledge in advance would enable us better to protect the community. Exhaustive study of single typical criminals is valuable because they represent a large number. The more exact knowledge we have of inmates the better we can manage them in the institutions. Such work will bring more men of education and training into the service. As most of the inmates of reformatories and prisons are normal, any

knowledge gained about them will be useful to the community at large. Any system of training or education that will help inmates of penal institutions to become good citizens is needed in the community at large.

Proper and full statistics of the abnormal classes would alone justify this work. This requires not only a knowledge of statistics, but first-hand knowledge of the subject matter. The statistics must be interpreted; a pile of bricks does not make a house. This is the main reason so many statistics are useless. The work naturally falls under government control, as the institutions for the abnormal classes are already under such control. The university cannot properly do such work as the study of the large numbers which are necessary for sage conclusions, nor can private endowment gather matter of a more or less confidential nature from public institutions.

The following statements as to the criminal are not based upon experimental research so much as upon the experience of those who have studied criminals directly or who have had practical control of large numbers in prisons or reformatories:

*First.* The prison should be a reformatory and the reformatory a school. The principal object of both should be to teach good mental, moral and physical habits. Both should be distinctly educational.

*Second.* It is detrimental financially, as well as socially and morally, to release prisoners when there is probability of their returning to crime, for in this case the convict is much less expensive than the ex-convict.

*Third.* The determinate sentence permits many prisoners to be released who are morally certain to return to crime. The indeterminate sentence is the best method of affording the prisoner an opportunity to reform without exposing society to unnecessary dangers.

*Fourth.* The ground for the imprisonment of the criminal is, first of all, because he is dangerous to society. This principle avoids the uncertainty that may rest upon the decision as to the degree of freedom of will, for upon this last prin-

ciple some of the most brutal crimes would receive a light punishment. If a tiger is in the street, the main question is not the degree of his freedom of will or guilt. Every man who is dangerous to property or life, whether insane, criminal or feeble-minded, should be confined, but not necessarily punished.

*Fifth.* The publication in the newspapers of criminal details and photographs is a positive evil to society on account of the law of imitation, and in addition it makes the criminal proud of his record and develops the morbid curiosity of the people, and it is especially the mentally and morally weak who are affected.

*Sixth.* It is admitted by some of the most intelligent criminals and by prison officers in general that the criminal is a fool, for he is opposing himself to the best, the largest and the strongest portion of society and is almost sure to fail.

In connection with this resolution it may not be out of place to make a few remarks as to the gentleman who has planned and developed the work embodied in the resolution. Mr. MacDonald has for several years been endeavoring to have established at Washington and in some of the state capitals a laboratory to study the abnormal classes. For the last ten years he has carried on the work in the Bureau of Education at Washington under many difficulties. He is the author of some ten works on criminological and other patho-social subjects, six of which have been published by the government. These works are used as reference or text books in our universities and some have been translated into several languages. I might mention "Abnormal Man," "Experimental Study of Children," "A Plan for the Study of Man" and "Statistics of Crime, Suicide and Insanity." In brief, his work has been well received in the scientific world, both in Europe and this country, though it be of a pioneer nature and therefore liable to encounter special difficulties in the way of prejudice and misinterpretation, and in addition the unavoidable mistakes to which all pioneer work is subject. Mr. MacDonald has had a

very extensive education and preparation for such work. After being graduated from college, he spent two years as post graduate at Harvard in philosophical and psychological lines; was then appointed Fellow in Psychology at Johns Hopkins University. Subsequently he spent four years in Europe in medical and sociological studies, especially in so-called patho-social investigations. He is now recognized as the pioneer in this country. After being under specialists in different universities, he was appointed Docent in Criminology in Clark University of Worcester, Massachusetts, where he first began to develop the work. After two years of lecture and seminary work here, he was called to the United States Bureau of Education to continue this line of inquiry.

William L. January, of Michigan :

I rise to the point of order that the gentleman has exceeded his time.

Joseph R. Edson :

I am just through, sir.

The President :

The question is on the adoption of the resolution that has been read.

The resolution was adopted.

The President :

Is the Committee on Patent Law ready to report ?

Robert S. Taylor, of Indiana :

I am the only member of the committee present; two of the members being detained at home by illness and two others being absent abroad. I did not know that until I came here. The committee therefore has no written report ready, but there is a word that I want to say. At the last meeting of of the Association the committee was directed to present to Congress two bills, which were considered and approved by the Association at that time. One was a bill providing for the creation of a Court of Patent Appeals; the other was a bill amending the Trade-Mark Law. Those bills were referred to

the proper committees in Congress, and at each hearing members of our committee attended. The bills are still pending before the committees of the two houses, and they will require further attention and further diligence to secure their passage. We find ourselves confronted with a bill drawn by a lawyer upon his own responsibility, but which, nevertheless, was entitled to consideration, and the consideration of which impedes the progress of the Association's bill.

I desire to offer this resolution :

*Resolved*, That the action of the committee in reference to the bills which were directed to be laid before Congress by the Committee on Patent, Trade-Mark and Copyright Law be so far approved and the committee directed to continue its efforts to secure the passage of the bills.

The resolution was seconded and adopted.

Robert S. Taylor :

There were two or three other matters referred to the committee last year upon which it has taken no action, and I ask that as to those time be given the committee.

The President :

If there is no objection, it will be so ordered.

Is there a report from the Committee on Federal Courts?

Charles F. Libby, of Maine :

In the absence of the Chairman of the committee I beg to state that the situation is much the same as at the time of our last report. The bill which has received the approval of this Association has been presented to Congress. There has also been presented another bill which differs somewhat from the bill presented by our committee. We hope to have our bill reported by the Judiciary Committee, but time is necessary to work out that result, and I move that the committee be continued with the same powers as heretofore.

The motion was seconded and adopted.

The President :

The Committee on Federal Code of Criminal Procedure, of which Mr. Tucker is Chairman.

George M. Forster, of Washington :

I was formerly a member of that committee. The committee has not been able to accomplish anything, and I move that it be dropped from the list of special committees.

Charles F. Manderson, of Nebraska :

That is a special committee and can be dropped, and I therefore second the gentleman's motion.

The motion was adopted.

The President :

The Committee on Industrial Property and International Negotiation.

Paul Bakewell, of Missouri :

The Chairman of that committee died during the past summer, and the preparation of a report was in his hands. Therefore there is no report from that committee, and we ask for further time.

The President :

If there is no objection, time will be granted and the committee continued.

Is there any report from the Committee on Title to Real Estate ?

Ferdinand Shack, of New York :

No, sir ; and I ask that the committee be continued.

The President :

Unless there is objection, the committee is continued.

Next and last is the Committee on Louisiana Purchase Exposition.

Jacob Klein, of Missouri :

This committee, which has had charge, so far as this Association is concerned, of working out the details for the Universal Congress of Lawyers and Jurists, has completed its work. I have not been able to confer with all the members of the committee on account of the multiplicity of duties which have devolved upon those who are here, and I will ask that the

Secretary of the Association read the report which I have handed to him.

The report was read by the Secretary.

*(See the Report in the Appendix.)*

A Member :

I move the adoption of the report with the thanks of the Association.

The motion was seconded and adopted.

Thomas J. Kernan, of Louisiana :

I desire to offer the following resolution and move its adoption :

*Resolved*, That this Association expresses its deep appreciation and tenders its sincere thanks to the Louisiana Purchase Exposition Company, the Missouri Bar Association, the St. Louis Bar Association, the Board of Lady Managers of the Louisiana Purchase Exposition and to the people of St. Louis for the genial welcome and cordial hospitality extended to it and its members during this session of 1904.

Frank M. Higgins, of Maine :

I second the resolution and ask that it be put to a rising vote.

The resolution was adopted by a rising vote.

The President :

Is there anything under the head of miscellaneous business ?

Ralph W. Breckenridge, of Nebraska :

I rise to make a report from the committee to whom was referred the resolution to amend the Constitution so as to create a standing committee on Insurance Law, and to move its adoption.

The report was read by Mr. Breckenridge, as follows :

Your committee, to whom was referred the resolution to amend the Constitution so as to create a standing committee on Insurance Law, begs to report :

No business touches, directly and indirectly, more people and so many interests as the insurance business. Insurance con-



tracts are issued every day that furnish indemnity against loss from the perils of the sea, from fire, water, wind, death, sickness, accidental injury, negligence, boiler explosions, broken windows, bad debts, burglars, thieves and dishonest employees. This is not a complete list of the subjects of insurance, and the list is growing. The American people paid in 1903 for insurance the startling sum of \$1,000,000,000. For that vast treasure they had in force on January 1, 1904, \$50,000,000,000 of insurance of all kinds. They were paid by the insurance companies for losses during the year 1903 approximately \$750,000,000. The actual assets of the companies engaged in this stupendous business approximates \$3,000,000,000. All will admit that without the substantial collateral afforded by insurance the complex structure of modern business enterprise would crumble and fall.

But the mutual rights of the assured and of the companies have not up to this time been understood by the general public or by the Bar as a whole, nor have these mutual rights and obligations of insurer and insured invariably been intelligently or fairly administered in court. Our great universities are instituting courses on insurance and the law schools now make the law of insurance a separate topic in their courses of study. The problem of the nationalization of insurance companies and how to accomplish it is a live one and will not be settled by one decision. The adoption of a uniform fire policy and the things that ought to be embodied in it are matters that have had consideration to some extent from that much-burdened Committee on Uniform State Laws. These facts show the magnitude and importance of the subject and furnish most excellent reasons for the creation of a standing committee of this Association through whose efforts, acting so far as may be practicable with the Committee on Uniform State Laws, steps may be taken to secure needed reforms bearing directly on this vital factor of our commerce and social organization.

Your Committee therefore recommends the adoption of the resolution by which the proposed standing committee is established.

Respectfully submitted,

RALPH W. BRECKENRIDGE,  
RODNEY A. MERCUR,  
GEO. WHITELOCK,

*Committee.*

Theodore P. Davis, of Indiana :

I second the adoption of the report.

The report and the resolution amending the Constitution were adopted.

The Secretary :

I have a report from the Executive Committee. There was referred to that committee at the first session of this meeting a resolution offered by Mr. Spoons, of Texas, for the purpose of providing a method by which members who had been dropped for non-payment of dues might be reinstated. The Executive Committee yesterday considered the matter, and they report the resolution in a little different form, but accomplishing substantially the same result :

*Resolved*, That the second paragraph in the thirteenth section of the by-laws be amended as follows: By striking out the words "all back dues" and inserting the words "such back dues as the committee shall think equitable."

M. A. Spoons, of Texas :

I move the adoption of the report of the Executive Committee and the amendment of the by-laws in accordance with it.

The motion adopting the report and amending the by-laws was adopted.

Adolph Sloman, of Michigan :

Mr. President, I offer the following amendment to the by-laws :

"There shall be appointed annually a committee to be known as the Reception Committee, consisting of fifteen members of the Association, whose duty it shall be to attend immediately before and at the opening of the first day's session of the meeting to receive members and delegates and introduce them to each other, with a view of making them better acquainted and establishing a spirit of good fellowship among them."

I have attended several meetings of the Association and have invariably noticed the lack of facilities provided for getting the members better acquainted with each other, and it

has often occurred to me that if we had an active and energetic committee to do this much good would be accomplished, as I believe it is just as important to the success of an organization of this character to awaken a spirit of good fellowship among its members as to transact its other business.

The President :

The Chair would state that this year we appointed the local Association in St. Louis and in the State of Missouri as such reception committee. I do not know whether it has been possible for them to be much in evidence or not, because of the multiplicity of attractions and the press of business upon them here.

Adolph Sloman :

Presumably, the committee was appointed by the local Bar Association, and I have no doubt they attempted to do good work, but I believe such committee should be appointed from this body.

The President :

That was a committee from this body consisting of those members residing in this state.

Upon motion duly seconded, the proposed amendment was referred to the Executive Committee.

Sigmund Zeisler, of Illinois :

I desire to submit an amendment to our by-laws and then to move that it be referred to the Executive Committee for consideration and report at the next annual meeting.

*Resolved*, That the third paragraph of By-Law XII be amended so as to read as follows :

All committee reports shall, at least twenty days before the annual meeting of the Association, be transmitted to the Secretary, who shall have the same printed and distributed by mail to all the members of the Association at least ten days before the annual meeting. No legislation shall be recommended or approved except upon the report of a committee. The reading of reports at the annual meeting shall be dispensed with, unless otherwise ordered by the Executive Committee or called for by a vote of the meeting.

The resolution was seconded and the motion referring it to the Executive Committee was adopted.

Edward Q. Keasbey, of New Jersey :

I desire to bring in the same way before the Association the question whether it is the wish of the Association that the President's address shall continue to be occupied with a statement of the statutes passed during the year. I am aware that it is a matter of very great importance that this Association should have before it every year a statement of the development of the statute laws of the country. Very great good is done by having the Association examine this subject and by having the work done by some man of pronounced ability who is able to get at the spirit and meaning of the statutes and show the progress of legislation, but at the same time I think it prevents the Association from having the benefit of the original ideas of the man chosen as President on some subject which he wishes to discuss, and it has occurred to me that it might be well to give the President free foot on the topics of the day and at the same time have some responsible and able man appointed to do the other work. I would therefore make the suggestion that this matter be referred to the Executive Committee for its consideration in order to determine whether or not an amendment of the Constitution should be made in this regard.

James O. Crosby, of Iowa :

I am opposed to that idea. Great honors are always accompanied by great responsibilities, and it is a very great honor to be President of the American Bar Association, and if this work is transferred to the hands of another it should be with a compensation commensurate at least with the labor to be performed, because there would be no honor attached to it.

Charles F. Manderson, of Nebraska :

If I may indulge in a little personal reminiscence on this subject, I will call the attention of my brethren to the fact that there was placed upon me for two consecutive years, the odd and the even numbered years, the duty as acting Presi-

dent of making this compilation, showing the noteworthy changes in the laws, federal and state. I found it to be a most difficult task, taking much time, exhausting one's patience and a labor that ought to receive considerable compensation in honor. I agree with my friend that full compensation comes to the man who is honored by selection to the presidency of this Association for any amount of labor that may be entailed upon him. I think, perhaps, the most valued and most valuable part of the printed proceedings of the Association is the information concerning changes in the law contained in the addresses of the Presidents, and I do not believe that if you throw this burden upon a committee or upon any man other than the President of the Association that it will be so well performed. I am glad to note that Mr. Keasbey's proposition is not that we shall now amend the Constitution, but simply suggest this matter to the Executive Committee for its consideration and report. There is nothing in the Constitution that prevents, there is nothing in the Constitution that has ever prevented, any President of this Association from giving his views upon any subject. Sometimes, perhaps, Presidents have stepped a little outside of that which we considered strict professional duty and have given their views upon subjects that might just as well have been omitted; but, however that may be, the President in the preparation of his address can dilate upon any subject that is near his heart to the full extent of his desire, and when it comes to this mere formal matter of showing the changes that have been made in the laws, federal and state, it is very easy for him to ask the congressional privilege and print and not talk. I hope there will be no change made in the Constitution in this respect, for the printed matter showing the changes in statute law is of great value to the profession.

Fabius H. Busbee, of North Carolina:

I heartily concur in the remarks made by the gentleman from Nebraska. The labor, if thrown upon a single man, would be great, but I apprehend that the usual course which

has been taken will be taken hereafter. The President will request the members of the General Council, a committee of lawyers, one from each state, to aid him in noting the statutory changes that have been made in the respective states.

Robert D. Benedict, of New York :

I want to emphasize what has been said, that this is a proposition to strike out from our proceedings the most valuable thing in my opinion in its whole history. Whenever I have been asked by gentlemen who were not members of the Association what is the special object of being a member I have always pointed to this collection of the addresses of the Presidents containing this compilation as the most valuable source of information to be found anywhere for a lawyer who desires to keep posted in the progress of legislation. I am so much opposed to this proposition that I object to the proposition even being referred to the Executive Committee.

The President :

The Association will permit me a word, having just gone through this experience. I was fortunate in having a year in which not many of the states held legislative sessions, and I received such generous assistance from each member of the General Council that while it was labor, yet it was a pleasant task. Of course, as suggested by the gentleman from Nebraska, who for two years was President of this Association, the President can speak upon any topic that is near to his heart, but where this work is so done, that it is a valuable compendium, as I am sure you will believe when you see the printed address, only part of which I undertook to read, and which is largely the work of the members of the General Council, and, with the leave to print, with discretion upon the part of the President not to read it all, but to have it there for future reference, it appears to me that the old lines that have prevailed from the beginning ought to continue.

Henry H. Ingersoll, of Tennessee :

I rise to the point of order that it is not within the province of the Executive Committee to consider this matter.

The President :

The Chair would rule that the point of order of the gentleman is not well taken. We can refer this matter to the Executive Committee, but they will have to report back to us upon it. They can take no action which will in any way change the Constitution.

Joseph Wheless, of Missouri :

I move that the motion to refer this matter to the Executive Committee be laid on the table.

Charles S. Varian, of Utah :

I second that motion.

The motion to lay the resolution on the table was adopted.

Edward Q. Keasbey, of New Jersey :

The Committee on Law Reporting and Digesting made a report yesterday just before the close of the session, and I am under the impression that no action was taken upon it at that time. If I am correct in so understanding, I move that the report be received, filed and printed.

The motion was seconded and adopted.

G. A. Finkelnburg, of Missouri :

Before this meeting adjourns I desire to make a suggestion either to the Executive Committee or to the officers of the Association with reference to the size of the hall in which we hold our annual meetings. It is a fact that when motions are made on the right of this hall we over here on the left are not able to understand what is going on. I have experienced this same difficulty at Saratoga, and at other places where we have met, and I think in the future we ought to endeavor to have a smaller hall which will conduce to the deliberative character of our proceedings.

The President :

The Executive Committee will bear the suggestion in mind.

Henry L. Stone, of Kentucky :

Mr. President, I desire to offer the following resolution :

*Resolved*, That the Secretary be and he is hereby authorized and directed to cause to be distributed to the members in

## 62 PRESIDENT'S ACKNOWLEDGMENT OF VARIOUS INVITATIONS.

attendance, for their information and use, printed in convenient form, copies of the Constitution and by-laws of this Association at each annual meeting.

This resolution is offered because of the fact that during the sessions of this Association we have felt the need of examination of the by-laws and Constitution as certain amendments have been offered and discussed.

William L. January, of Michigan :

That is already done, sir, and has been carried out every year.

The President :

I will ask the Secretary to make a statement.

The Secretary :

For a number of years the Secretary has brought to the meeting a quantity of pamphlet copies of the Constitution and by-laws and had them on the table for distribution, and has called attention in his annual report to the fact that the copies were available.

Henry L. Stone :

After hearing the statement of the Secretary, I withdraw the resolution.

The President :

I am called upon to state to the meeting the conclusion of the Executive Committee with reference to certain invitations to the Association as a body to visit outside places and take part in hospitalities tendered to us. The conclusion which we have arrived at is that inasmuch as we were in large part the guests of the Exposition Company we would not attempt to accept as a body any invitations outside of the grounds of the Exposition, and, with your approval, I will direct the Secretary to acknowledge the invitations which have been so kindly extended to us with thanks and expressing our inability to accept of the hospitality offered.

We will now pass to the election of officers nominated by the General Council this morning.



James O. Crosby, of Iowa :

I move that the Secretary be authorized to cast the ballot of the Association for the election of Henry St. George Tucker as President of the Association.

William L. January :

I second that motion.

The motion was adopted.

The President :

The Secretary has cast the ballot, and I declare Henry St. George Tucker, of Virginia, elected President of the Association for the ensuing year.

Theodore S. Garnett, of Virginia :

I now move that the President of the Association be directed to cast the ballot of the Association for all the other nominees.

The motion was seconded and adopted.

The President :

I beg to announce, gentlemen, that the ballot has been cast and that all the gentlemen nominated have been regularly elected.

Frank E. Gregg, of Colorado :

I move that we do now adjourn *sine die*.

The President :

Before putting the question on the motion to adjourn, I desire to announce that the Universal Congress of Lawyers and Jurists will meet in this hall at two o'clock. Many of the members of this Association are delegates to that Congress and all who are not delegates are invited as guests to be present.

The Association then adjourned *sine die*.

JOHN HINKLEY,  
*Secretary.*

## SECRETARY'S REPORT.

ST. LOUIS, MISSOURI, September 26, 1904.

The report of the proceedings of our last meeting at Hot Springs, Virginia, in August, 1903, has been printed and distributed to all the members, and also to all State Bar Associations and legal journals and to a large number of libraries in the United States and abroad on our free mailing list.

There were 1814 members at the close of the last meeting. Forty-eight members have been elected by the Executive Committee between meetings, under Article IV of the Constitution as amended.

All of the states are represented in our membership, except the State of Nevada. Also the following territories are represented: Alaska, Arizona, Hawaii, Indian, New Mexico and Oklahoma. The Philippine Islands are also represented.

Invitations were sent to all State Bar Associations to send three delegates to this meeting, and to all City and County Bar Associations in states having no State Bar Association to send two delegates. There are forty State Bar Associations, four Territorial Bar Associations, the Bar Association of the District of Columbia and about three hundred and seventy-nine local Bar Associations.

The reports of the Committees on Indian Legislation and on Penal Laws and Prison Discipline for this year have been printed and distributed to members by mail fifteen days before the meeting. The reports of the Committees on Jurisprudence and Law Reform, Commercial Law and Grievances have been printed for use at the meeting.

Notices were sent to all members of standing and special committees, requesting their attention to matters referred to such committees.

It may be of interest to the members of the Association to learn that the Secretary's stock of back reports of the pro-

ceedings of the Association escaped the Baltimore fire of February 7 and 8, 1904. The reports were stored in one of the rooms in the basement of the Chamber of Commerce, which building was totally destroyed. The room containing our reports and a small room adjoining were the only rooms in the building which escaped.

The Secretary endeavors to keep the street addresses of all members, and members changing their addresses are requested to notify the Secretary.

The register of those in attendance is kept on the table at the hall of meeting during the sessions. Every member or delegate is requested to sign it as early as convenient. A list of those present will be printed for distribution at the meeting, and will also be included in the report of proceedings.

There are copies of the constitution, lists of officers and members of committees, copies of committee reports and forms of nomination on the table for distribution.

Respectfully submitted,

JOHN HINKLEY,

*Secretary.*

# TREASURER'S REPORT.

1903-1904.

*Dr.*

To cash received—Date of last report, . . . . .		\$6,796 54	
“ “ “ —Dues of members for the year			
1901, (1), . . . . .	\$5 00		
“ “ “ —Dues of members for the year			
1902, (12), . . . . .	60 00		
“ “ “ —Dues of members for the year			
1903, (83), . . . . .	415 00		
“ “ “ —Dues of members for the year,			
1904, (1647), . . . . .	8,235 00		
“ “ “ —Dues of members for the year			
1905, (13), . . . . .	65 00	8,780 00	
“ “ “ —Sale of Transactions, . . . . .		68 25	
“ “ “ —Albany Trust Company, interest			
on daily balances, . . . . .		61 19	
Total receipts, . . . . .		\$15,705 98	

*Cr.*

1903.

Aug. 22.	By cash paid—Argus Company,			
	Albany, N. Y., for print-			
	ing dinner tickets, ta-			
	ble cards, etc., . . . . .	9 75		
28.	“ “ “ —Homestead Hotel, Hot			
	Springs, Va., for annual			
	dinner, . . . . .	1,341 20		
28.	“ “ “ —Homestead Hotel, Hot			
	Springs, Va., express			
	charges and telephone,	3 95		
	Amount carried forward, . . .	\$1,354 90	\$15,705 98	

# REPORT OF THE TREASURER.

67

1903.		By amount brought forward, . .	\$1,354 90	\$15,705 98
Aug. 29.	By cash paid—	Hotel bill, Treasurer's Clerk while attending 26th Annual Meeting, .	22 15	
29.	" " "	—Homestead Hotel, Hot Springs, Va., expenses of Sir Frederick Pol- lock, . . . . .	38 25	
Sept. 2.	" " "	—Fort Orange Club, Al- bany, N. Y., for cigars for 26th annual dinner, .	91 05	
5.	" " "	—G. W. Russell, of Phila- delphia, for mounting and engraving Presi- dent's gavel, . . . . .	19 25	
5.	" " "	—Incidental expenses in connection with serving annual dinner, . . . . .	20 00	
5.	" " "	—Expenses of Treasurer's Clerk to Hot Springs, Va., to attend 26th Annual Meeting, . . .	46 08	
12.	" " "	—Charles A. Morrison, Stenographer, balance of bill for reporting 26th Annual Meeting, . . .	254 75	
26.	" " "	—John Hinkley, Secre- tary, to refund his dis- bursements for stamps, telegrams, printing, clerical assistance, trav- eling expenses of clerk, etc., . . . . .	686 14	
29.	" " "	—G. W. Russell for chest for President's gavel, .	7 50	
Amount carried forward, . . .			\$2,540 07	\$15,705 98

1903.			By amount brought forward, . .	\$2,540 07 \$15,705 98
Oct. 9.	By cash paid—George Krueger, of Albany, for oak office cabinet for use of Treasurer, . . . . .			28 00
14.	" " " —George M. Sharp, account expenses Committee on Legal Education and Admissions to the Bar, . . . . .			176 95
15.	" " " —The Argus Co., Albany, for printing Treasurer's notices, circulars, stamped envelopes, etc.,			5 25
Nov. 16.	" " " —Addressograph Co. for 181 plates for addressing machine, Treasurer's office, . . . . .			4 09
Dec. 15.	" " " —President Rawle, expenses, telegrams, telephone, traveling expenses of clerk, postage for year 1903, etc., . .			113 14
1904.				
Jan. 11.	" " " —National Press Intelligence Co., newspaper clippings, . . . . .			4 10
11.	" " " —George M. Sharp, account expenses of Committee on Legal Education and Admissions to the Bar, . . . . .			115 55
15.	" " " —Samuel Williston, on account Committee on Uniform State Laws, services in drafting Sales Act, . . . . .			500 00
	Amount carried forward, . . .			<u>\$3,487 15 \$15,705 98</u>

# REPORT OF THE TREASURER.

69

1904.		By amount brought forward, . .	\$3,487 15	\$15,705 98
Jan. 27.	By cash paid—	Amasa M. Eaton, account Committee on Uniform State Laws for Michigan Law Review, for printing 1000 copies paper on "Negotiable Instruments Law," . .	26 50	
Feb. 19.	" " "	—Wm. F. Murphy's Sons Co. for Treasurer's receipt books Nos. 3 and 4, . . . . .	12 25	
27.	" " "	—Addressograph Company, for 46 plates, . .	1 84	
29.	" " "	—George M. Sharp, expenses attending meeting Executive Committee, Section of Legal Education, . . . . .	22 00	
29.	" " "	—Chas. M. Hepburn, expenses attending meeting of Executive Committee, Section of Legal Education, . . . . .	55 00	
29.	" " "	—James Barr Ames, expenses attending meeting of Executive Committee, Section of Legal Education, . . . . .	18 00	
Mch. 28.	" " "	—Postmaster, Albany, for 4000 stamped envelopes for notices of dues 1904 and receipts, . . . . .	85 60	
Amount carried forward, . . .			\$3,708 34	\$15,705 98

1904.		By amount brought forward, . .	\$3,708 34	\$15,705 98
Apr. 26.	By ca	paid—Expenses account Com- mittee on Uniform State Laws printing 900 pamphlets “Proposed Reforms in Marriage and Divorce Laws.” . .	27 50	
26.	“	“ —Amasa M. Eaton, post- age in mailing pamph- let “Proposed Reforms in Marriage and Di- vorce Laws,” account Committee on Uniform State Laws, . . . . .	20 00	
May 16.	“	“ —Brown, Treacey & Sperry Co. embossed letter heads furnished H.F.Stevens,Chairman, etc., St. Paul, Minn, . .	19 80	
21.	“	“ —John Hinkley, expenses attending meeting of Executive Committee in St. Louis, . . . . .	44 40	
21.	“	“ —William P. Breen, ex- penses attending meet- ing of Executive Com- mittee at St. Louis, . .	19 50	
21.	“	“ —P. W. Meldrim, expen- ses attending meeting of Executive Committee at St. Louis, . . . . .	62 81	
21.	“	“ —M. F. Dickinson, ex- penses attending meet- ing of Executive Com- mittee at St. Louis, . .	58 00	
Amount carried forward, . . .			\$3,960 35	\$15,705 98



REPORT OF THE TREASURER.

71

1904.		By amount brought forward, . .	\$3,960 35	\$15,705 98
May 21.	By cash paid—	Francis Rawle, expenses attending meeting of Executive Committee at St. Louis, . . . . .	39 75	
June 18.	" "	" —Frederick E. Wadhams, expenses attending meeting of Executive Committee at St. Louis, . . . . .	45 05	
28.	" "	" —Charles E. Lloyd, for boxing, labeling and preparing for shipment Reports for 1903, . . . . .	20 00	
July 5.	" "	" —George Whitelock, expenses attending meeting of Committee on Commercial Law, . . . . .	20 00	
11.	" "	" —United States Express Company, for shipping Report for 1903, . . . . .	540 81	
19.	" "	" —J. B. Lyon & Co., for copy session laws of New York, for President Hagerman, . . . . .	2 50	
Aug. 4.	" "	" —Postmaster, Albany, 1000 2c. stamped envelopes, . . . . .	21 40	
6.	" "	" —Postmaster for 1900 2c. stamped envelopes, . . . . .	40 28	
15.	" "	" —George M. Sharp, account expenses of Committee on Legal Education and Admissions to the Bar, . . . . .	105 50	
27.	" "	" —Dando Printing and Publishing Company, for printing, binding, boxing and shipping 26th Annual Report, . . . . .	2,744 25	
Amount carried forward, . . .			\$7,539 89	\$15,705 98

1904.		By amount brought forward, . .	\$7,539 89	\$15,705 98
Aug. 27.		By cash paid—Dando Printing and Publishing Company, for printing list of Offi- cers and By-laws, copies of papers, addresses, reports of committees, programmes, list of dele- gates and general print- ing, . . . . .	679 05	
Sept. 1.	"	" —P. W. Meldrim, expen- ses attending meeting of Committee on Juris- prudence and Law Re- form, . . . . .	77 00	
1.	"	" —William A. Ketcham, expenses attending meeting of Committee on Jurisprudence and Law Reform (\$69.10) and expenses attending meeting of Louisiana Purchase Exposition Committee (\$7.80), . .	76 90	
1.	"	" —Edward Kaestner, for services as Treasurer's Clerk from August 28, 1903, to August 28, 1904, . . . . .	400 00	
6.	"	" —Clarke & Baker, for buff guide cards for card index for Treasurer's use, . . . . .	1 15	
Amount carried forward, . . .			\$8,773 99	\$15,705 98

## REPORT OF THE TREASURER.

73

1904.	By amount brought forward, . .	\$8,773 99	\$15,705 98
Sept. 15.	By cash paid—Argus Company, Albany, for circulars, printing cards on envelopes, letter heads, notices of dues, from March 29 to August 11, 1904, . . . . .	26 00	
19.	“ “ “ —George Whitelock, for expenses incurred on account of Committee on Commercial Law, traveling expenses, etc.,	15 00	
	“ “ “ —For stamps, expressage, telegrams, Treasurer's office supplies, stationery, etc., for the year, .	48 07	
	Total disbursements, .	\$8,863 06	\$15,705 98
	Total receipts, . . . . .	\$15,705 98	
	Total disbursements, . . . . .	8,863 06	
	Balance, . . . . .	\$6,842 92	

Which balance consists of—

Amount to credit of Treasurer in Albany Trust Company, Albany, N. Y., . . . . .	6,822 50
Cash on hand, . . . . .	20 42
	<u>\$6,842 92</u>

Respectfully submitted,

FREDERICK E. WADHAMS,  
*Treasurer.*

Dated St. Louis, Mo., Sept. 26, 1904.

Audited and found correct.

CHARLES MARTINDALE,  
EDWARD B. WHITNEY,  
*Auditing Committee.*

**REPORT**  
**OF THE**  
**EXECUTIVE COMMITTEE.**

ST. LOUIS, MISSOURI, September 27, 1904.

The Executive Committee respectfully report that under the last clause of Article IV of the Constitution, providing for the election of members by the Executive Committee between meetings when nominated by a majority of the Vice-President and Local Council, the following forty-eight members were elected.

*(See List at end of List of New Members.)*

Your Committee further report that, in accordance with the 12th By-Law, appropriations were made for the use of committees for the year 1903-1904, on their application, not exceeding the following amounts:

\$146.10 to the Committee on Jurisprudence and Law Reform.

\$500 to the Committee on Legal Education and Admissions to the Bar.

\$500 to the Committee on Patent, Trade Mark and Copyright Law.

\$750 to the Committee on Uniform State Laws.

\$200 to the Committee on Classification of the Law.

\$250 to the Committee on Federal Courts.

\$2500 to the Committee on the Louisiana Purchase Exposition, to be expended for the purposes of the Universal Congress of Lawyers and Jurists.

Your Committee further report that the appropriation of \$2500 to the Committee on the Louisiana Purchase Exposition was made in view of the understanding that the use of Festival Hall and necessary adjacent rooms would be given

for the meetings; that the dinner would be given without expense to the Association; that admission to the grounds on the days of the American Bar Association meetings and the Congress would be furnished to members and delegates of the American Bar Association and delegates to the Universal Congress of Lawyers and Jurists, and that the proceedings of the Universal Congress of Lawyers and Jurists would be printed in sufficient quantity for distribution to members of the American Bar Association and delegates to the Congress without expense to the American Bar Association.

All committees for the ensuing year whose work may entail expense are requested to conform to the 12th By-Law, which requires "previous application in advance of the expenditure." Such application should be made to the Executive Committee through the Secretary.

Respectfully submitted,

JAMES HAGERMAN,  
JOHN HINKLEY,  
FREDERICK E. WADHAMS,  
FRANCIS RAWLE,  
PETER W. MELDRIM,  
PLATT ROGERS,  
THEODORE S. GARNETT,  
WILLIAM P. BREEN,  
*Executive Committee.*

# MEMBERS AND DELEGATES REGISTERED

AT THE  
TWENTY-SEVENTH ANNUAL MEETING.  
1904.

JAMES HAGERMAN, . . . . . Missouri.  
*President.*

JOHN HINKLEY, . . . . . Maryland.  
*Secretary.*

FREDERICK E. WADHAMS, . . . . . New York.  
*Treasurer.*

FRANCIS RAWLE, . . . . . Pennsylvania.

PETER W. MELDRIM, . . . . . Georgia.

PLATT ROGERS, . . . . . Colorado.

WILLIAM P. BREEN, . . . . . Indiana.

THEODORE S. GARNETT, . . . . . Virginia.  
*Executive Committee.*

## ALABAMA.

BALL, FRED. S., . . . . . Montgomery.

COOPER, LAWRENCE, . . . . . Huntsville.

DEGRAFFENRIED, EDWARD, . . . . . Greensboro.

HOLLOWAY, J. L., . . . . . Montgomery.

HUNDLEY, OSCAR R., . . . . . Huntsville.

NATHAN, JOSEPH H., . . . . . Sheffield.

ROULHAC, THOMAS R., . . . . . Sheffield.

THOMAS, WILLIAM H., . . . . . Montgomery.

WEAKLEY, SAMUEL D., . . . . . Birmingham.

## ALASKA TERRITORY.

JENNINGS, R. W., . . . . . Skagway.

WICKERSHAM, JAMES, . . . . . Fairbanks.

## ARIZONA TERRITORY.

BARNES, W. H., . . . . . Tucson.

HERNDON, JOHN C., . . . . . Prescott.

## ARKANSAS.

COCKRILL, ASHLEY, . . . . .	Little Rock.
FLETCHER, JOHN, . . . . .	Little Rock.
HILL, JOSEPH M., . . . . .	Fort Smith.
HUGHES, ALLEN, . . . . .	Jonesboro.
MARTIN, THOMAS B., . . . . .	Little Rock.
MOORE, J. M., . . . . .	Little Rock.
PEIRCE, E. B., . . . . .	Little Rock.
READ, JAMES F., . . . . .	Fort Smith.
ROSE, GEORGE B., . . . . .	Little Rock.
STAYTON, JOSEPH M., . . . . .	Newport.

## CALIFORNIA.

BAILEY, EDWARD C., . . . . .	Los Angeles.
BANE, CHARLES H., . . . . .	San Francisco.
HAWKINS, JOHN J., . . . . .	Los Angeles.
HELM, LYNN, . . . . .	Los Angeles.
HUNSAKER, WILLIAM J., . . . . .	Los Angeles.
MONROE, CHARLES, . . . . .	Los Angeles.
ROSE, WALTER T. J., . . . . .	Los Angeles.
TRIPPET, OSCAR A., . . . . .	Los Angeles.

## COLORADO.

CAMPBELL, CHARLES M., . . . . .	Denver.
CUTHBERT, L. M., . . . . .	Denver.
GAST, CHARLES E., . . . . .	Pueblo.
GODDARD, L. M., . . . . .	Denver.
GREGG, FRANK E., . . . . .	Denver.
GUNTER, JULIUS C., . . . . .	Denver.
HODGES, WILLIAM V., . . . . .	Denver.
HOYT, LUCIUS W., . . . . .	Denver.
O'DONNELL, T. J., . . . . .	Denver.
ROGERS, HENRY T., . . . . .	Denver.
ROGERS, PLATT, . . . . .	Denver.
VAN CISE, EDWIN, . . . . .	Denver.

## CONNECTICUT.

BALDWIN, SIMEON E., . . . . .	New Haven.
HARRIMAN, E. A., . . . . .	Derby.
WEBB, JAMES H., . . . . .	New Haven.

## DISTRICT OF COLUMBIA.

BREWER, DAVID J., . . . . .	Washington.
BROWNE, ALDIS B., . . . . .	Washington.

## DISTRICT OF COLUMBIA—Continued.

CHURCH, MELVILLE, . . . . .	Washington.
DODGE, WILLIAM W., . . . . .	Washington.
EDSON, JOSEPH R., . . . . .	Washington.
GREELEY, A. P., . . . . .	Washington.
MCGILL, J. NOTA, . . . . .	Washington.
RAISTON, JACKSON H., . . . . .	Washington.
SMITH, LUTHER R., . . . . .	Washington.

## FLORIDA.

WILLIAMS, R. W., . . . . .	Tallahassee.
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## GEORGIA.

ABBOTT, BENJAMIN F., . . . . .	Atlanta.
DONALSON, JOHN E., . . . . .	Bainbridge.
MELDRIM, PETER W., . . . . .	Savannah.
MERRILL, J. H., . . . . .	Thomasville.
MCWHORTER, HAMILTON, . . . . .	Atlanta.
SMITH, BURTON, . . . . .	Atlanta.
STRICKLAND, JOHN J., . . . . .	Athens.

## HAWAII TERRITORY.

CASTLE, WILLIAM R., . . . . .	Honolulu.
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## IDAHO.

BABB, JAMES E., . . . . .	Lewiston.
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## ILLINOIS.

BARNETT, O. R., . . . . .	Chicago.
BARTON, GEORGE P., . . . . .	Chicago.
DICKINSON, J. M., . . . . .	Chicago.
FURNESS, WILLIAM ELIOT, . . . . .	Chicago.
GRESHAM, OTTO, . . . . .	Chicago.
HARKER, O. A., . . . . .	Champaign.
LEE, BLEWETT, . . . . .	Chicago.
MACK, JULIAN W., . . . . .	Chicago.
OGDEN, HOWARD N., . . . . .	Chicago.
PAGE, GEORGE T., . . . . .	Peoria.
STARR, MERRITT, . . . . .	Chicago.
WHEELER, ARTHUR D., . . . . .	Chicago.
WILLIAMS, E. P., . . . . .	Galesburg.
WILLIAMS, GUY P., . . . . .	Galesburg.
ZEISLER, SIGMUND, . . . . .	Chicago.



## INDIAN TERRITORY.

BLEDSON, S. T., . . . . .	Ardmore.
JACKSON, CLIFFORD L., . . . . .	Muskogee.
KORNEGAY, W. H., . . . . .	Vinita.
RALLS, JOSEPH G., . . . . .	Atoka.
SHARP, J. F., . . . . .	Purcell.
WEST, PRESTON C., . . . . .	Muskogee.
WILLIAMS, R. L., . . . . .	Durant.

## INDIANA.

BRADFORD, CHESTER, . . . . .	Indianapolis.
BREEN, WILLIAM P., . . . . .	Fort Wayne.
CLARKE, GEORGE E., . . . . .	South Bend.
CUNNINGHAM, GEORGE A., . . . . .	Evansville.
DAVIS, THEODORE P., . . . . .	Indianapolis.
ELLISON, T. E., . . . . .	Fort Wayne.
EWING, JOHN G., . . . . .	Notre Dame.
FRASER, DANIEL, . . . . .	Fowler.
FUNKHOUSER, A. F., . . . . .	Evansville.
HAMMOND, EDWIN P., . . . . .	Lafayette.
HOGATE, ENOCH G., . . . . .	Bloomington.
JEWETT, CHARLES L., . . . . .	New Albany.
KETCHAM, W. A., . . . . .	Indianapolis.
MARTINDALE, CHARLES, . . . . .	Indianapolis.
MOORES, MERRILL, . . . . .	Indianapolis.
MORRIS, JOHN, JR., . . . . .	Fort Wayne.
NEWBERGER, LOUIS, . . . . .	Indianapolis.
PALMER, T. F., . . . . .	Monticello.
ROSE, JAMES E., . . . . .	Auburn.
SAYLER, S. M., . . . . .	Huntington.
SIMMS, DAN W., . . . . .	Lafayette.
STUART, WILLIAM V., . . . . .	Lafayette.
TAYLOR, R. S., . . . . .	Fort Wayne.
VESEY, W. J., . . . . .	Fort Wayne.

## IOWA.

BURK, W. D., . . . . .	Muscatine.
CARR, E. M., . . . . .	Manchester.
COLE, C. C., . . . . .	Des Moines.
CRAIG, JOHN E., . . . . .	Keokuk.
CROSBY, JAMES O., . . . . .	Garnaville.
DEERY, JOHN, . . . . .	Dubuque.
DEVITT, J. F., . . . . .	Muscatine.
DUDLEY, C. A., . . . . .	Des Moines.
FLICKINGER, ISAAC H., . . . . .	Council Bluffs.
HOWELL, W. C., . . . . .	Keokuk.

## IOWA—Continued.

QUARTON, W. B., . . . . .	Algona.
ROBERTS, M. A., . . . . .	Ottumwa.
ROBERTS, W. J., . . . . .	Keokuk.
ROBINSON, GIFFORD S., . . . . .	Sioux City.
SAWYER, HAZEN I., . . . . .	Keokuk.
WAKEFIELD, GEORGE W., . . . . .	Sioux City.
YOUNKER, B. A., . . . . .	Des Moines.

## KANSAS.

GREEN, J. W., . . . . .	Lawrence.
HIGGINS, WILLIAM E., . . . . .	Lawrence.
JONES, JOHN J., . . . . .	Chanute.
LARIMER, J. B., . . . . .	Topeka.
MILLIKEN, JOHN D., . . . . .	McPherson.
OSMOND, WILLIAM, . . . . .	Great Bend.
PERKINS, LUCIUS H., . . . . .	Lawrence.
SMITH, CHARLES BLOOD, . . . . .	Topeka.

## KENTUCKY.

BASKIN, JOHN B., . . . . .	Louisville.
BRANDEIS, ALBERT S., . . . . .	Louisville.
DOOLAN, JOHN C., . . . . .	Louisville.
FAIRLEIGH, JAMES F., . . . . .	Louisville.
MACKOY, W. H., . . . . .	Covington.
REED, W. M., . . . . .	Paducah.
STONE, HENRY L., . . . . .	Louisville.
STRAUS, F. P., . . . . .	Louisville.
TOMLIN, JOHN G., . . . . .	Walton.
TRABUE, EDMUND F., . . . . .	Louisville.
TROUP, JAMES O., . . . . .	Bowling Green.

## LOUISIANA.

BENEDICT, W. S., . . . . .	New Orleans.
CAHN, EDGAR M., . . . . .	New Orleans.
FLORANCE, ERNEST T., . . . . .	New Orleans.
HART, W. O., . . . . .	New Orleans.
KERNAN, THOMAS J., . . . . .	Baton Rouge.
KRUTTSCHNITT, E. B., . . . . .	New Orleans.
ROUSE, J. D., . . . . .	New Orleans.
SUTHERLIN, E. W., . . . . .	Shreveport.
THORNTON, J. R., . . . . .	Alexandria.
WENCK, ERNEST J., . . . . .	New Orleans.

## MAINE.

HAMLIN, HANNIBAL E., . . . . . Ellsworth.  
 HIGGINS, FRANK M., . . . . . Limerick.  
 LIBBY, CHARLES F., . . . . . Portland.

## MARYLAND.

ARMSTRONG, ALEX., . . . . . Hagerstown.  
 BRISCOE, JOHN P., . . . . . Prince Frederick.  
 HEUISLER, CHARLES W., . . . . . Baltimore.  
 HINKLEY, JOHN, . . . . . Baltimore.  
 LESER, OSCAR, . . . . . Baltimore.  
 MARBURY, W. L., . . . . . Baltimore.  
 MORRIS, THOMAS J., . . . . . Baltimore.  
 NILES, ALFRED S., . . . . . Baltimore.  
 SHARP, GEORGE M., . . . . . Baltimore.  
 TUCK, PHILEMON H., . . . . . Baltimore.  
 VENABLE, RICHARD M., . . . . . Baltimore.  
 WALTER, M. R., . . . . . Baltimore.  
 WHITELOCK, GEORGE, . . . . . Baltimore.

## MASSACHUSETTS.

AMES, JAMES BARR, . . . . . Cambridge.  
 BAILEY, HOILIS R., . . . . . Cambridge.  
 BARNES, CHARLES B., JR., . . . . . Boston.  
 BEALE, JOSEPH H., JR., . . . . . Cambridge.  
 CONANT, ERNEST B., . . . . . Boston.  
 COULSON, WALTER, . . . . . Lawrence.  
 DABNEY, LEWIS S., . . . . . Boston.  
 HEMENWAY, ALFRED, . . . . . Boston.  
 JENNINGS, ANDREW J., . . . . . Fall River.  
 MCCLENCH, WILLIAM W., . . . . . Springfield.  
 NILES, WILLIAM H., . . . . . Lynn.  
 O'BRIEN, THOMAS D., . . . . . Holyoke.  
 SAWYER, ALFRED P., . . . . . Lowell.  
 SCHOFIELD, WILLIAM, . . . . . Malden.  
 STOREY, MOORFIELD, . . . . . Boston.  
 WILLISTON, SAMUEL, . . . . . Belmont.

## MICHIGAN.

BARNETT, J. F., . . . . . Grand Rapids.  
 BOUDEMAN, DALLAS, . . . . . Kalamazoo.  
 BREWSTER, JAMES H., . . . . . Ann Arbor.  
 DAVIS, D. C. T., JR., . . . . . Lansing.  
 JANUARY, WILLIAM L., . . . . . Detroit.

## MICHIGAN—Continued.

MOORE, JOSEPH B., . . . . .	Lansing.
SLOMAN, ADOLPH, . . . . .	Detroit.
STEVENS, F. W., . . . . .	Detroit.
TUTHILL, HARRY B., . . . . .	Michigan City.
WILGUS, H. L., . . . . .	Ann Arbor.
WILSON, CHARLES M., . . . . .	Grand Rapids.

## MINNESOTA.

BRILL, H. R., . . . . .	St. Paul.
BROWN, FREDERICK V., . . . . .	Minneapolis.
BROWN, ROME G., . . . . .	Minneapolis.
FISH, DANIEL, . . . . .	Minneapolis.
MASON, ALFRED F., . . . . .	St. Paul.
SANBORN, WALTER H., . . . . .	St. Paul.
WASHBURN, J. L., . . . . .	Duluth.

## MISSISSIPPI.

BOWERS, EATON J., . . . . .	Bay St. Louis.
MONTGOMERY, M. A., . . . . .	Oxford.

## MISSOURI.

ABBOTT, A. L., . . . . .	St. Louis.
ALLEN, CHARLES CLAFLIN, . . . . .	St. Louis.
ASHLEY, HENRY DEL., . . . . .	Kansas City.
BABBITT, BYRON F., . . . . .	St. Louis.
BAKEWELL, PAUL, . . . . .	St. Louis.
BALL, R. E., . . . . .	Kansas City.
BARCLAY, SHEPARD, . . . . .	St. Louis.
BATES, CHARLES W., . . . . .	St. Louis.
BLAIR, ALBERT, . . . . .	St. Louis.
BLEVINS, JOHN A., . . . . .	St. Louis.
BRUMBACK, JEFFERSON B., . . . . .	Kansas City.
BRYAN, P. TAYLOR, . . . . .	St. Louis.
BRYSON, JOSEPH M., . . . . .	St. Louis.
CARR, JAMES A., . . . . .	St. Louis.
CHARLES, BENJAMIN H., . . . . .	St. Louis.
CHRISTIE, HARVEY L., . . . . .	St. Louis.
CLARKE ENOS, . . . . .	St. Louis.
COCHRAN, ALEXANDER G., . . . . .	St. Louis.
COLLINS, CHARLES CUMMINGS, . . . . .	St. Louis.
COOK, W. W., . . . . .	Columbia.
CUNNINGHAM, EDWARD, JR., . . . . .	St. Louis.
CURTIS, WILLIAM S., . . . . .	St. Louis.

## MISSOURI—Continued.

DONALDSON, W. R., . . . . .	St. Louis.
DONALDSON, WILLIAM R., JR., . . . . .	St. Louis.
DOUGLAS, WALTER B., . . . . .	St. Louis.
DYER, DAVID P., . . . . .	St. Louis.
EARLY, M. C., . . . . .	St. Louis.
ELIOT, EDWARD C., . . . . .	St. Louis.
FINKELNBURG, G. A., . . . . .	St. Louis.
FISHER, D. D., . . . . .	St. Louis.
FLITCRAFT, P. R., . . . . .	St. Louis.
FOWLER, A. C., . . . . .	St. Louis.
GANTT, JAMES B., . . . . .	Jefferson City.
GARVIN, WILLIAM EVERETT, . . . . .	St. Louis.
GATES, EDWARD P., . . . . .	Kansas City.
GENTRY, N. F., . . . . .	Columbia.
GRANT, LEE W., . . . . .	St. Louis.
GROSSMAN, E. M., . . . . .	St. Louis.
HAFF, D. J., . . . . .	Kansas City.
HAGERMAN, JAMES, . . . . .	St. Louis.
HAGERMAN, JAMES, JR., . . . . .	St. Louis.
HINTON, E. W., . . . . .	Columbia.
HOPKINS, JAMES L., . . . . .	St. Louis.
HOUGH, WARWICK M., . . . . .	St. Louis.
HOUTS, CHARLES A., . . . . .	St. Louis.
JACKSON, GEORGE P. B., . . . . .	St. Louis.
JOHNSON, GEORGE S., . . . . .	St. Louis.
KEYSOR, WILLIAM W., . . . . .	St. Louis.
KLEIN, JACOB, . . . . .	St. Louis.
LADD, SANFORD B., . . . . .	Kansas City.
LAWSON, JOHN D., . . . . .	Columbia.
LEHMANN, F. W., . . . . .	St. Louis.
LYON, MONTAGUE, . . . . .	St. Louis.
MAHAN, GEORGE A., . . . . .	Hannibal.
MAJOR, SAMUEL C., . . . . .	Fayette.
MARLATT, HERBERT R., . . . . .	St. Louis.
MCKEIGHAN, J. E., . . . . .	St. Louis.
NEW, ALEXANDER, . . . . .	Kansas City.
NOBLE, JOHN W., . . . . .	St. Louis.
ORRICK, ALLEN C., . . . . .	St. Louis.
OTTOFY, L. FRANK, . . . . .	St. Louis.
PALMER, CLARENCE S., . . . . .	Kansas City.
PHILIPS, JOHN F., . . . . .	Kansas City.
PORTER, V. MOTT, . . . . .	St. Louis.
REYBURN, VALLE, . . . . .	St. Louis.
REYNOLDS, MATT. G., . . . . .	St. Louis.

## MISSOURI—Continued.

REYNOLDS, THOMAS H., . . . . .	Kansas City.
ROBERT, E. S., . . . . .	St. Louis.
ROBERTS, V. H., . . . . .	Columbia.
ROBERTSON, GEORGE, . . . . .	Mexico.
SCHOFIELD, F. L., . . . . .	Hannibal.
SHERWOOD, ADIEL, . . . . .	St. Louis.
SKINKER, THOMAS K., . . . . .	St. Louis.
SPENCER, R. P., . . . . .	St. Louis.
SPENCER, SELDEN P., . . . . .	St. Louis.
SWARTS, S. L., . . . . .	St. Louis.
TAYLOR, SENECA N., . . . . .	St. Louis.
THAYER, AMOS M., . . . . .	St. Louis.
THOMPSON, WILLIAM B., . . . . .	St. Louis.
TICHENOR, C. O., . . . . .	Kansas City.
TITUS, FRANK, . . . . .	Kansas City.
TRIMBLE, J. McD., . . . . .	Kansas City.
WALKER, R. F., . . . . .	St. Louis.
WARD, HUGH C., . . . . .	Kansas City.
WHEELER, JOSEPH, . . . . .	St. Louis.
WOOD, HORATIO D., . . . . .	St. Louis.
WOODSON, A. M., . . . . .	St. Joseph.

## MONTANA.

SCALLON, WILLIAM, . . . . .	Butte.
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## NEBRASKA.

BAXTER, IRVING F., . . . . .	Omaha.
BRECKENRIDGE, RALPH W., . . . . .	Omaha.
DUNDEY, CHARLES L., . . . . .	Omaha.
HASTINGS, W. G., . . . . .	Wilbur.
LETTON, CHARLES B., . . . . .	Fairbury.
MANDERSON, CHARLES F., . . . . .	Omaha.
POUND, ROSCOE, . . . . .	Lincoln.
REESE, M. B., . . . . .	Lincoln.
WAKELEY, ELEAZER, . . . . .	Omaha.

## NEVADA.

HUFFAKER, F. M., . . . . .	Virginia City.
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## NEW HAMPSHIRE.

CHASE, IRA A., . . . . .	Bristol.
EASTMAN, SAMUEL C., . . . . .	Concord.

## NEW JERSEY.

BERGEN, J. J., . . . . .	Somerville.
BORCHERLING, CHARLES, . . . . .	Newark.
COLE, C. L., . . . . .	Atlantic City.
HARDIN, JOHN R., . . . . .	Newark.
KEASBEY, EDWARD Q., . . . . .	Morristown.
PARKER, CORTLANDT, . . . . .	Newark.
PARKER, CORTLANDT, JR., . . . . .	Newark.

## NEW YORK.

BENEDICT, ROBERT D., . . . . .	New York.
BIJUR, NATHAN, . . . . .	New York.
BOOTHBY, J. W., . . . . .	New York.
CLEARWATER, ALPHONSO T., . . . . .	Kingston.
DILLON, JOHN F., . . . . .	New York.
DIVEN, GEORGE M., . . . . .	Elmira.
FIELD, FRANK HARVEY, . . . . .	Brooklyn.
FLEISCHMANN, SIMON, . . . . .	Buffalo.
HUFFCUT, E. W., . . . . .	Ithaca.
INGALSBE, GRENVILLE M., . . . . .	Sandy Hill.
JONES, W. MARTIN, . . . . .	Rochester.
LOGAN, WALTER S., . . . . .	New York.
MOSES, RAPHAEL J., . . . . .	New York.
MCCRARY, A. J., . . . . .	Binghamton.
MCLEAN, DONALD, . . . . .	New York.
RONAN, E. D., . . . . .	Albany.
SHACK, FERDINAND, . . . . .	New York.
SUMERWELL, E. K., . . . . .	New York.
SUTRO, THEODORE, . . . . .	New York.
SUMNER, EDWARD A., . . . . .	New York.
WADHAMS, FREDERICK E., . . . . .	Albany.
WALSH, ARTHUR R., . . . . .	Albany.
WHEELER, EVERETT P., . . . . .	New York.
WHITNEY, EDWARD B., . . . . .	New York.
WOLLMAN, HENRY, . . . . .	New York.

## NEW MEXICO.

CATRON, T. B., . . . . .	Santa Fé.
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## NORTH CAROLINA.

ANDREWS, A. B., JR., . . . . .	Raleigh.
BIGGS, J. CRAWFORD, . . . . .	Durham.
BRIDGERS, JOHN L., . . . . .	Tarboro.
BUSBEE, F. H., . . . . .	Raleigh.
MANLY, CLEMENT, . . . . .	Winston-Salem.

## OHIO.

BETTMAN, ALFRED, . . . . .	Cincinnati.
DOYLE, JOHN H., . . . . .	Toledo.
FOLLETT, A. D., . . . . .	Marietta.
FOLLETT, MARTIN DEWEY, . . . . .	Marietta.
FREIBERG, A. J., . . . . .	Cincinnati.
HEPBURN, CHARLES M., . . . . .	Cincinnati.
HOYT, JAMES H., . . . . .	Cleveland.
JAMES, FRANCIS BACON, . . . . .	Cincinnati.
JOHNSON, A. R., . . . . .	Ironton.
KIBLER, EDWARD, . . . . .	Newark.
MAXWELL, LAWRENCE, JR., . . . . .	Cincinnati.
REECE, PATTERSON A., . . . . .	Cincinnati.
ROGERS, W. P., . . . . .	Cincinnati.
SMITH, J. H. CHARLES, . . . . .	Cincinnati.
SQUIRE, ANDREW, . . . . .	Cleveland.
VAN DEMAN, JOHN N., . . . . .	Dayton.
VORYS, A. I., . . . . .	Lancaster.

## OKLAHOMA TERRITORY.

AMES, C. B., . . . . .	Oklahoma City.
BLAKE, E. E., . . . . .	El Reno.
BIERER, A. G. C., . . . . .	Guthrie.
GILLETTE, FRANK E., . . . . .	Anadarko.
HAINER, BAYARD T., . . . . .	Perry.
MACKEY, A. M., . . . . .	Pond Creek.
MARTIN, HENRY B., . . . . .	Perry.
SHEAR, B. D., . . . . .	Oklahoma City.
WELLS, FRANK, . . . . .	Oklahoma City.
WOMACK, T. J., . . . . .	Alva.

## OREGON.

BEAN, R. S., . . . . .	Salem.
CAREY, CHARLES H., . . . . .	Portland.
SCHNABEL, CHARLES J., . . . . .	Portland.
STILLMAN, A. D., . . . . .	Pendleton.

## PENNSYLVANIA.

ALLEN, W. H., . . . . .	Warren.
BAER, GEORGE F., . . . . .	Reading.
BOYD, A. D., . . . . .	Uniontown.
COLAHAN, JOHN B., JR., . . . . .	Philadelphia.
EWING, NATHANIEL, . . . . .	Uniontown.



## PENNSYLVANIA—Continued.

HARGEST, WILLIAM M., . . . . .	Harrisburg.
HENSEL, W. U., . . . . .	Lancaster.
LEWIS, WILLIAM DRAPER, . . . . .	Philadelphia.
MERCUR, RODNEY A., . . . . .	Towanda.
MESTREZAT, S. LESLIE, . . . . .	Uniontown.
MIKELL, WILLIAM E., . . . . .	Philadelphia.
MILLER, E. SPENCER, . . . . .	Philadelphia.
MINER, S. R., . . . . .	Wilkesbarre.
NICHOLS, H. S. P., . . . . .	Philadelphia.
NILES, HENRY C., . . . . .	York.
PAGE, HOWARD W., . . . . .	Philadelphia.
PALMER, HENRY W., . . . . .	Wilkesbarre.
POTTER, W. P., . . . . .	Pittsburg.
RALSTON, ROBERT, . . . . .	Philadelphia.
RAWLE, FRANCIS, . . . . .	Philadelphia.
SCOTT, WILLIAM, . . . . .	Pittsburg.
SMITH, ALFRED PERCIVAL, . . . . .	Philadelphia.
SMITHERS, WILLIAM W., . . . . .	Philadelphia.
STAAKE, WILLIAM H., . . . . .	Philadelphia.
STEWART, RUSSELL C., . . . . .	Easton.
UMBEL, ROBERT E., . . . . .	Uniontown.
WISE, JESSE H., . . . . .	Pittsburg.
WOLVERTON, S. P., . . . . .	Sunbury.

## RHODE ISLAND.

EATON, AMASA M., . . . . .	Providence.
HOGAN, JOHN W., . . . . .	Providence.

## SOUTH CAROLINA.

MORDECAI, T. MOULTRIE, . . . . .	Charleston.
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## SOUTH DAKOTA.

CRAWFORD, COE I., . . . . .	Huron.
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## TENNESSEE.

CAMP, E. C., . . . . .	Knoxville.
INGERSOLL, HENRY H., . . . . .	Knoxville.
METCALF, C. W., . . . . .	Memphis.
PILCHER, JAMES S., . . . . .	Nashville.
SANFORD, EDWARD T., . . . . .	Knoxville.
SWANEY, W. B., . . . . .	Chattanooga.
YOUNG, D. K., . . . . .	Clinton.

**TEXAS.**

BURGES, WILLIAM H., . . . . .	El Paso.
KEMP, WYNDHAM, . . . . .	El Paso.
SANER, R. E. L., . . . . .	Dallas.
SPOONTS, M. A., . . . . .	Fort Worth.
STREET, ROBERT G., . . . . .	Galveston.
WILLIAMS, HORACE B., . . . . .	Dallas.

**UTAH.**

VARIAN, C. S., . . . . .	Salt Lake City.
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**VERMONT.**

TAFT, ELIHU B., . . . . .	Burlington.
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**VIRGINIA.**

GARNETT, THEODORE S., . . . . .	Norfolk.
GRIFFIN, S., . . . . .	Bedford City.
HUGHES, ROBERT M., . . . . .	Norfolk.
McHUGH, C. A., . . . . .	Roanoke.
SCOTT, R. CARTER, . . . . .	Richmond.
TUCKER, H. ST. GEORGE, . . . . .	Lexington.

**WASHINGTON.**

FORSTER, GEORGE M., . . . . .	Spokane.
GRAVES, C. B., . . . . .	Ellensburg.
MORTON, JOSEPH F., . . . . .	Spokane.
WHITSON, EDWARD, . . . . .	North Yakima.

**WEST VIRGINIA.**

AMBLER, B. M., . . . . .	Parkersburg.
BRANNON, W. W., . . . . .	Weston.
MERRICK, C. D., . . . . .	Parkersburg.
SMITH, HARVEY F., . . . . .	Clarksburg.
VANDEWORT, J. W., . . . . .	Parkersburg.
WHITE, ROBERT W., . . . . .	Wheeling.
WOLFE, W. H., JR., . . . . .	Parkersburg.

**WISCONSIN.**

FROST, EDWARD W., . . . . .	Milwaukee.
GILMORE, EUGENE A., . . . . .	Madison.
LUDWIG, J. C., . . . . .	Milwaukee.
PERELES, J. M., . . . . .	Milwaukee.
RICHARDS, H. S., . . . . .	Madison.
TURNER, W. J., . . . . .	Milwaukee.

**WYOMING.**

VAN DEVANTER, WILLIS, . . . . .	Cheyenne.
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Total registered, 457.

## DELEGATES, 1904.

### ALABAMA STATE BAR ASSOCIATION.

ROBERT F. LIGON, . . . . . Montgomery.  
JOSEPH H. NATHAN, . . . . . Sheffield.  
J. LEE HOLLOWAY, . . . . . Montgomery.

### ALASKA.

#### TANANA BAR ASSOCIATION.

JAMES WICKERSHAM, . . . . . Tanana.

### CALIFORNIA STATE BAR ASSOCIATION.

WILLIAM J. HUNSAKER, . . . . . Los Angeles.  
CHARLES H. BANE, . . . . . San Francisco.  
HENRY C. SCHAEZTER, . . . . . San Francisco.

### COLORADO BAR ASSOCIATION.

JULIUS B. BISSELL, . . . . . Denver.  
WILLIAM V. HODGES, . . . . . Denver.  
HENRY T. ROGERS, . . . . . Denver.

### GEORGIA BAR ASSOCIATION.

HAMILTON McWHORTER, . . . . . Athens.  
L. F. GARRARD, . . . . . Columbus.  
W. W. GORDON, JR., . . . . . Savannah.

### HAWAIIAN BAR ASSOCIATION.

WILLIAM R. CASTLE, . . . . . Honolulu.

### ILLINOIS STATE BAR ASSOCIATION.

WILLIAM C. NIBLACK, . . . . . Chicago.  
OTTO GRESHAM, . . . . . Chicago.  
BLEWETT LEE, . . . . . Chicago.

### INDIAN TERRITORY BAR ASSOCIATION.

W. H. KORNEGAY, . . . . . Vinita.  
W. A. LEDBETTER, . . . . . Ardmore.  
C. B. STUART, . . . . . South McAlester.

### STATE BAR ASSOCIATION OF INDIANA.

GEORGE A. CUNNINGHAM, . . . . . Evansville.  
THOMAS E. ELLISON, . . . . . Fort Wayne.  
CHARLES L. JEWETT, . . . . . New Albany.

## IOWA STATE BAR ASSOCIATION.

GEORGE W. WAKEFIELD, . . . . . Sioux City.  
 M. A. ROBERTS, . . . . . Ottumwa.  
 J. W. BOLLINGER, . . . . . Davenport.

## BAR ASSOCIATION OF THE STATE OF KANSAS.

L. H. PERKINS, . . . . . Lawrence.  
 WILLIAM THOMSON, . . . . . Burlingame.  
 WILLIAM OSMOND, . . . . . Great Bend.

## KENTUCKY STATE BAR ASSOCIATION.

F. P. STRAUS, . . . . . Louisville.  
 W. M. REED, . . . . . Paducah.  
 CHARLES W. METCALF, . . . . . Pineville.

## MARYLAND STATE BAR ASSOCIATION.

ALEXANDER ARMSTRONG, . . . . . Hagerstown.  
 OSCAR LESER, . . . . . Baltimore.  
 CHARLES W. HEUISLER, . . . . . Baltimore.

## MASSACHUSETTS.

## BAR ASSOCIATION OF THE COUNTY OF ESSEX.

WILLIAM H. NILES, . . . . . Lynn.  
 WALTER COULSON, . . . . . Lawrence.

## HAMPDEN BAR ASSOCIATION.

WILLIAM W. MCCLENCH, . . . . . Springfield.  
 THOMAS D. O'BRIEN, . . . . . Holyoke.

## MICHIGAN STATE BAR ASSOCIATION.

ADOLPH SLOMAN, . . . . . Detroit.  
 L. E. KNAPPEN, . . . . . Grand Rapids.  
 GEORGE W. BATES, . . . . . Detroit.

## MINNESOTA STATE BAR ASSOCIATION.

HASCAL R. BRILL, . . . . . St. Paul.  
 J. L. WASHBURN, . . . . . St. Paul.

## MISSOURI BAR ASSOCIATION.

WILLIAM M. WILLIAMS, . . . . . Booneville.  
 SELDEN P. SPENCER, . . . . . St. Louis.  
 C. O. TICHENOR, . . . . . Kansas City.

## NEW YORK STATE BAR ASSOCIATION.

ALPHONSO T. CLEARWATER, . . . . . Kingston.  
GEORGE M. DIVEN, . . . . . Elmira.

## OHIO STATE BAR ASSOCIATION.

A. R. JOHNSON, . . . . . Ironton.

## OKLAHOMA TERRITORY BAR ASSOCIATION.

SELWYN DOUGLAS, . . . . . Oklahoma City.  
E. E. BLAKE, . . . . . El Reno.  
T. J. WOMACK, . . . . . Alva.

## PENNSYLVANIA BAR ASSOCIATION.

WILLIAM W. SMITHERS, . . . . . Philadelphia.  
A. D. BOYD, . . . . . Uniontown.  
W. H. ALLEN, . . . . . Warren.

## BAR ASSOCIATION OF TENNESSEE.

C. W. METCALF, . . . . . Memphis.

## TEXAS BAR ASSOCIATION.

R. E. L. SANER, . . . . . Dallas.

## STATE BAR ASSOCIATION OF UTAH.

C. S. VARIAN, . . . . . Salt Lake City.  
W. I. SNYDER, . . . . . Salt Lake City.

## VIRGINIA STATE BAR ASSOCIATION.

ALEXANDER HAMILTON, . . . . . Petersburg.  
R. CARTER SCOTT, . . . . . Richmond.  
THEODORE S. GARNETT, . . . . . Norfolk.

## WASHINGTON STATE BAR ASSOCIATION.

WILL H. THOMPSON, . . . . . Seattle.  
CARROLL B. GRAVES, . . . . . Ellensburg.  
EDWARD WHITSON, . . . . . North Yakima.

## WEST VIRGINIA BAR ASSOCIATION.

ROBERT WHITE, . . . . . Wheeling.  
WESLEY MOLLOHAN, . . . . . Charleston.  
J. W. VANDERVORT, . . . . . Parkersburg.

## LIST OF MEMBERS ELECTED.

### ALABAMA.

DEGRAFFENBIE, EDWARD, . . . . .	Greensboro.
DENT, S. H., JR., . . . . .	Montgomery.
JONES, GEORGE W., . . . . .	Montgomery.
NATHAN, JOSEPH H., . . . . .	Sheffield.

### ARKANSAS.

BOTTON, E. A., . . . . .	Lake Vallaye.
FITZHUGH, HENRY L., . . . . .	Fort Smith.
HICKS, JOHN T., . . . . .	Little Rock.
JONES, GUSTAVE, . . . . .	Newport.
KIRTEN, WILLIAM, . . . . .	Lake Vallaye.
*PIERCE, EDWARD B., . . . . .	Little Rock.
SCOTT, N. B., . . . . .	Lake Vallaye.
STAYTON, JOSEPH M., . . . . .	Newport.

### CALIFORNIA.

BAILEY, EDWARD C., . . . . .	Los Angeles.
HAWKINS, JOHN J., . . . . .	Los Angeles.
TRASK, WALTER J., . . . . .	Los Angeles.

### COLORADO.

FLEMING, JOHN D., . . . . .	Boulder.
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### CONNECTICUT.

IVES, J. MOSS, . . . . .	Danbury.
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### GEORGIA.

COBB, A. WARD, . . . . .	Atlanta.
DONALSON, JOHN E., . . . . .	Bainbridge.
STRICKLAND, JOHN J., . . . . .	Athens.

### HAWAII TERRITORY.

CASTLE, WILLIAM R., . . . . .	Honolulu.
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### IDAHO.

BABB, JAMES E., . . . . .	Lewiston.
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## ILLINOIS.

BARNETT, OTTO RAYMOND, . . . . .	Chicago.
HUNTER, WILLIAM H., . . . . .	Kankakee.
JOHNSON, FRANK ASBURY, . . . . .	Chicago.
NORTHEUP, ELLIOTT J., . . . . .	Urbana.
WILLIAMS, GUY P., . . . . .	Galesburg.

## INDIAN TERRITORY.

DAVENPORT, JAMES S., . . . . .	Vinita.
KORNEGAY, W. H., . . . . .	Vinita.
SHARP, J. F., . . . . .	Purcell.

## INDIANA.

ELLISON, THOMAS E., . . . . .	Fort Wayne.
EWING, JOHN G., . . . . .	Notre Dame.
FUNKHOUSER, ARTHUR F., . . . . .	Evansville.
HEATON, OWEN N., . . . . .	Fort Wayne.
HOGATE, ENOCH G., . . . . .	Bloomington.
SIMMS, DAN W., . . . . .	Lafayette.
VESEY, ALLEN J., . . . . .	Fort Wayne.
VESEY, WILLIAM J., . . . . .	Fort Wayne.
WOOD, SOLOMON A., . . . . .	Fort Wayne.

## IOWA.

BALDWIN, W. W., . . . . .	Burlington.
DALE, HORATIO F., . . . . .	Des Moines.
FLICKINGER, ISAAC N., . . . . .	Council Bluffs.
HOWELL, WILLIAM C., . . . . .	Keokuk.
ROBINSON, GIFFORD S., . . . . .	Sioux City.
WHITMORE, CHESTER W., . . . . .	Ottumwa.

## KANSAS.

CONANT, ERNEST B., . . . . .	Topeka.
JONES, JOHN J., . . . . .	Chanute.
LARIMER, JEREMIAH B., . . . . .	Topeka.
ROSSINGTON, WILLIAM H., . . . . .	Topeka.
TURNER, ROBERT WILSON, . . . . .	Mankato.
WAGGENER, WILLIAM P., . . . . .	Atchison.

## KENTUCKY.

BRANDEIS, ALBERT S., . . . . .	Louisville.
HALL, WALKER C., . . . . .	Covington.
REED, WILLIAM M., . . . . .	Paducah.
TOMLIN, JOHN G., . . . . .	Walton.

## LOUISIANA.

BARRET, THOMAS C., . . . . .	Shreveport.
CLEGG, JOHN, . . . . .	New Orleans.
PUJO, ARSENE P., . . . . .	Lake Charles.
ROUSE, JOHN D., . . . . .	New Orleans.
THORNTON, J. R., . . . . .	Alexandria.
WENCK, E. J., . . . . .	New Orleans.

## MARYLAND.

ARMSTRONG, ALEXANDER, . . . . .	Hagerstown.
DENNIS, JAMES U., . . . . .	Baltimore.
DONNELLY, EDWARD A., . . . . .	Baltimore.
HEUISLER, CHARLES W., . . . . .	Baltimore.
NILES, ALFRED S., . . . . .	Baltimore.
TUCK, PHILEMON H., . . . . .	Baltimore.

## MASSACHUSETTS.

BAILEY, HOLLIS R., . . . . .	Boston.
CROSBY, JOHN C., . . . . .	Pittsfield.
FRENCH, ARTHUR P., . . . . .	Boston.
FRENCH, ASA P., . . . . .	Boston.
GARDNER, CHARLES L., . . . . .	Springfield.
GRAY, J. CONVERSE, . . . . .	Boston.
HAMLIN, CHARLES S., . . . . .	Boston.
HAMMOND, JOHN C., . . . . .	Northampton.
JOSLIN, JAMES T., . . . . .	Hudson.
KING, HENRY W., . . . . .	Worcester.
LOWELL, JOHN, . . . . .	Boston.
MALONE, DANA, . . . . .	Greenfield.
MOODY, WILLIAM H., . . . . .	Haverhill.
MORSE, GEORGE W., . . . . .	Boston.
MORTON, MARCUS, . . . . .	Boston.
MOULTON, HENRY P., . . . . .	Salem.
MCCLENCH, WILLIAM W., . . . . .	Springfield.
NILES, WILLIAM H., . . . . .	Lynn.
NUTTER, GEORGE R., . . . . .	Boston.
PARKER, HERBERT, . . . . .	Worcester.
PEARL, FRANCIS H., . . . . .	Haverhill.
PICKMAN, JOHN J., . . . . .	Lowell.
PINKERTON, ALFRED S., . . . . .	Worcester.
SAXE, JOHN W., . . . . .	Boston.
SEARS, RUSSELL A., . . . . .	Boston.
SLOCUM, EDWARD T., . . . . .	Pittsfield.
SLOCUM, WINFIELD S., . . . . .	Boston.
SMITH, FRANK BULKELEY, . . . . .	Worcester.
TAFT, GEORGE S., . . . . .	Worcester.



## MICHIGAN.

WILGUS, HORACE L., . . . . . Ann Arbor.

## MINNESOTA.

KELLOGG, FRANK B., . . . . . St. Paul.

STRINGER, EDWARD C., . . . . . St. Paul.

WASHBURN, JED. L., . . . . . Duluth.

## MISSOURI.

BABBITT, BYRON T., . . . . . St. Louis.

BRUMBACK, JEFFERSON, . . . . . Kansas City.

BRYSON, JOSEPH M., . . . . . St. Louis.

CARR, JAMES A., . . . . . St. Louis.

CHANDLER, JEFFERSON, . . . . . St. Louis.

CUNNINGHAM, EDWARD, JR., . . . . . St. Louis.

DONALDSON, WILLIAM R., JR., . . . . . St. Louis.

DYER, DAVID P., . . . . . St. Louis.

FISHER, D. D., . . . . . St. Louis.

FLITCRAFT, PEMBROOK R., . . . . . St. Louis.

GARVIN, WILLIAM EVERETT, . . . . . St. Louis.

GATES, E. P., . . . . . Kansas City.

GENTRY, NORTH F., . . . . . Columbia.

GRANT, LEE W., . . . . . St. Louis.

GROSSMAN, EMANUEL M., . . . . . St. Louis.

\*HAFF, DELBERT J., . . . . . Kansas City.

HAGERMAN, JAMES, JR., . . . . . St. Louis.

HIGDON, JOHN C., . . . . . St. Louis.

HOUGH, WARWICK M., . . . . . St. Louis.

HOUTS, CHARLES A., . . . . . St. Louis.

JACKSON, GEORGE P. B., . . . . . St. Louis.

JOHNSON, GEORGE S., . . . . . St. Louis.

LITTLEFIELD, WALTER, . . . . . Kansas City.

LYON, MONTAGUE, . . . . . St. Louis.

LYONS, MARTIN, . . . . . Marshall.

MAHAN, GEORGE A., . . . . . Hannibal.

MARLATT, HERBERT R., . . . . . St. Louis.

ORRICK, ALLEN C., . . . . . St. Louis.

REYBURN, VALLE, . . . . . St. Louis.

REYNOLDS, MATTHEWS G., . . . . . St. Louis.

ROBERTS, V. H., . . . . . Columbia.

SKINKER, THOMAS KEATH, . . . . . St. Louis.

SMITH, LUTHER ELY, . . . . . St. Louis.

SPENCER, R. P., . . . . . St. Louis.

## MISSOURI—Continued.

SWARTS, SOLOMON L., . . . . .	St. Louis.
TAYLOR, SENECA N., . . . . .	St. Louis.
WHELESS, JOSEPH, . . . . .	St. Louis.
WILLIAMS, JAMES C., . . . . .	Kansas City.
WISLIZENUS, FRED., . . . . .	St. Louis.
WOOD, HORATIO D., . . . . .	St. Louis.

## NEBRASKA.

DRYDEN, JOHN N., . . . . .	Kearney.
KINSLER, JAMES C., . . . . .	Omaha.
OLDHAM, WILLIS D., . . . . .	Kearney.
RAIN, FRANK L., . . . . .	Fairbury.
SEDGWICK, S. H., . . . . .	York.

## NEVADA.

HUFFAKER, FRANCIS M., . . . . .	Virginia City.
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## NEW JERSEY.

PARKER, CHARLES W., . . . . .	Jersey City.
PARKER, CHAUNCEY G., . . . . .	Newark.
PARKER, COURTLANDT, JR., . . . . .	Newark.

## NEW YORK.

ADAMS, ELBRIDGE L., . . . . .	Rochester.
BENEDICT, ABRAHAM, . . . . .	New York.
CABEY, MARTIN, . . . . .	Buffalo.
DIVEN, GEORGE M., . . . . .	Elmira.
DUGAN, PATRICK C., . . . . .	Albany.
GLYMER, MARTIN H., . . . . .	Albany.
HAND, RICHARD L., . . . . .	Elizabethtown.
HANFORD, SOLOMON, . . . . .	New York.
KNAUTH, ANTONIO, . . . . .	New York.
SUTRO, THEODORE, . . . . .	New York.
WALSH, ARTHUR R., . . . . .	Albany.

## NORTH CAROLINA.

DOUGLAS, ROBERT M., . . . . .	Greensboro.
MANLY, CLEMENT, . . . . .	Winston-Salem.
MEARES, IREDELLE, . . . . .	Wilmington.

OHIO.

BETTMAN, ALFRED,	Cincinnati.
HOGSETT, THOMAS H.,	Cleveland.
KIBLER, EDWARD,	Newark.
SMITH, J. H. CHARLES,	Cincinnati.
VANDEMAN, JOHN N.,	Dayton.
VORYS, ARTHUR I.,	Lancaster.

OKLAHOMA TERRITORY.

AMES, CHARLES B.,	Oklahoma City.
BIERER, A. G. CURTIN,	Guthrie.
BLAKE, ERNEST E.,	El Reno.
KANE, MATHEW J.,	Kingfisher.
MACKEY, ARTHUR M.,	Pond Creek.
WELLS, FRANK,	Oklahoma City.
WOMACK, T. J.,	Alva.

OREGON.

FENTON, WILLIAM D.,	Portland.
STILLMAN, ALPHONSO D.,	Pendleton.

PENNSYLVANIA.

POTTER, WILLIAM P.,	Pittsburg.
RAWLE, FRANCIS WILLIAM,	Philadelphia.

SOUTH CAROLINA.

MOWER, GEORGE SEWALL,	Newberry.
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TENNESSEE.

HARWOOD, THOMAS E.,	Trenton.
HENDERSON, G. MC.,	Rutledge.
METCALF, CHARLES W.,	Memphis.

TEXAS.

BURGES, ALFRED RUST,	San Angelo.
CARTER, H. C.,	San Antonio.
MILLER, CLARENCE H.,	Austin.
SANER, ROBERT E. LEE,	Dallas.
SEARCY, W. W.,	Brenham.
WILLIAMS, HORACE B.,	Dallas.

## WEST VIRGINIA.

COOPER, JOHN T., . . . . .	Parkersburg.
MOLLOHAN, WESLEY, . . . . .	Charleston.
VANDERVORT, JAMES W., . . . . .	Parkersburg.
WHITE, ROBERT, . . . . .	Wheeling.
WOLFE, WILLIAM HENRY, JR., . . . . .	Parkersburg.

## WISCONSIN.

GILMORE, EUGENE ALLEN, . . . . .	Madison.
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\*Elected by Executive Committee after meeting.

Number elected at meeting, 196.

ELECTED BY THE EXECUTIVE COMMITTEE BETWEEN  
THE MEETINGS OF 1903-1904.

## ARKANSAS.

HUGHES, ALLEN, . . . . .	Jonesboro.
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## DISTRICT OF COLUMBIA.

ATKINS, JOSEPH L., . . . . .	Washington.
DOOLITTLE, WILLIAM H., . . . . .	Washington.
FLANNERY, JOHN SPALDING, . . . . .	Washington.
TAYLOR, HANNIS, . . . . .	Washington.
WALTON, CLIFFORD S., . . . . .	Washington.
WILSON, CLARENCE R., . . . . .	Washington.

## FLORIDA.

CLARKSON, WALTER B., . . . . .	Jacksonville.
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## ILLINOIS.

HALL, JAMES PARKER, . . . . .	Chicago.
KARCHER, GEORGE H., . . . . .	Chicago.

## IOWA.

LENEHAN, DANIEL J., . . . . .	Dubuque.
MURPHY, DANIEL D., . . . . .	Elkader.
WRIGHT, CARROLL, . . . . .	Des Moines.

## KANSAS.

PERKINS, LUCIUS H., . . . . .	Lawrence.
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## KENTUCKY.

BURNETT, HENRY, . . . . .	Louisville.
FAIRLEIGH, JAMES FRANKLIN, . . . . .	Louisville.

## MASSACHUSETTS.

RUGG, ARTHUR P., . . . . .	Worcester.
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## MISSISSIPPI.

ROSE, A. J., . . . . . Greenville.

## MISSOURI.

BLEVINS, JOHN A., . . . . . St. Louis.

COLLINS, CHARLES CUMMINGS, . . . . . St. Louis.

PORTER, VALENTINE MOTT, . . . . . St. Louis.

ROBERT, EDWARD S., . . . . . St. Louis.

SCHOFIELD, F. L., . . . . . Hannibal.

WALKER, ROBERT F., . . . . . St. Louis.

## NEW JERSEY.

COLE, CLARENCE L., . . . . . Atlantic City.

## NEW YORK.

ELKUS, ABRAM I., . . . . . New York.

McKINLEY, ABNER, . . . . . New York.

## OKLAHOMA TERRITORY.

BEAUCHAMP, JAMES K., . . . . . Enid.

BURFORD, JOHN HENRY, . . . . . Guthrie.

BURWELL, BENJAMIN F., . . . . . Oklahoma City.

FULTON, E. L., . . . . . Pawnee.

GILLETTE, FRANK E., . . . . . Anadarko.

HUSTON, ABRAHAM H., . . . . . Guthrie.

IRWIN, C. F., . . . . . El Reno.

MARTIN, HENRY BARTON, . . . . . Perry.

PANCOAST, J. L., . . . . . Alva.

SCOTT, JOEL R., . . . . . Perry.

WRIGHTSMAN, CHARLES J., . . . . . Pawnee.

## PENNSYLVANIA.

GATES, THOMAS S., . . . . . Philadelphia.

HEWITT, LUTHER E., . . . . . Philadelphia.

WOODRUFF, CLINTON ROGERS, . . . . . Philadelphia.

## SOUTH CAROLINA.

McMAHON, JOHN J., . . . . . Columbia.

WILCOX, P. A., . . . . . Florence.

## WASHINGTON.

BUNN, JOHN MARSHALL, . . . . . Spokane.

DEWART, FREDERICK W., . . . . . Spokane.

EVERETTE, WILLIS E., . . . . . Tacoma.

TURNER, GEORGE, . . . . . Spokane.

WAKEFIELD, WILLIAM J. C., . . . . . Spokane.

Number elected by Executive Committee, 48.

## RECAPITULATION.

Alabama, . . . . .	4	Minnesota, . . . . .	3
Arkansas, . . . . .	9	Mississippi, . . . . .	1
California, . . . . .	3	Missouri, . . . . .	46
Colorado, . . . . .	1	Nebraska, . . . . .	5
Connecticut, . . . . .	1	Nevada, . . . . .	1
District of Columbia, . . .	6	New Jersey, . . . . .	4
Florida, . . . . .	1	New York, . . . . .	13
Georgia, . . . . .	3	North Carolina, . . . . .	3
Hawaii Territory, . . . . .	1	Ohio, . . . . .	6
Idaho, . . . . .	1	Oklahoma Territory, . . .	18
Illinois, . . . . .	7	Oregon, . . . . .	2
Indian Territory, . . . . .	3	Pennsylvania, . . . . .	5
Indiana, . . . . .	9	South Carolina, . . . . .	3
Iowa, . . . . .	9	Tennessee, . . . . .	3
Kansas, . . . . .	7	Texas, . . . . .	6
Kentucky, . . . . .	6	Washington, . . . . .	5
Louisiana, . . . . .	6	West Virginia, . . . . .	5
Maryland, . . . . .	6	Wisconsin, . . . . .	1
Massachusetts, . . . . .	30		
Michigan, . . . . .	1		
		Total, . . . . .	244

## MEMORANDUM.

The Annual Dinner was held on Wednesday, September 28, 1904, at the Tyrolean Alps, in the Exposition grounds. The dinner was given by the Louisiana Purchase Exposition Company to the American Bar Association, the delegates to the Universal Congress of Lawyers and Jurists and some invited guests. David R. Francis, of Missouri, President of the Louisiana Purchase Exposition Company, presided. Six hundred and fifteen members and delegates to the American Bar Association and delegates to the Universal Congress of Lawyers and Jurists and invited guests were present.

## LIST OF PRESIDENTS.

1. 1878-79-\*JAMES O. BROADHEAD,<sup>1</sup> . . St. Louis, Missouri.
2. 1879-80-\*BENJAMIN H. BRISTOW, . . New York, New York.
3. 1880-81-\*EDWARD J. PHELPS, . . . Burlington, Vermont.
4. 1881-82-\*CLARKSON N. POTTER,<sup>2</sup> . . New York, New York.
5. 1882-83-\*ALEXANDER R. LAWTON, . Savannah, Georgia.
6. 1883-84-CORTLANDT PARKER, . . . Newark, New Jersey.
7. 1884-85-\*JOHN W. STEVENSON, . . . Covington, Kentucky.
8. 1885-86-\*WILLIAM ALLEN BUTLER, . New York, New York.
9. 1886-87-\*THOMAS J. SEMMES, . . . New Orleans, Louisiana.
10. 1887-88-\*GEORGE G. WRIGHT, . . . Des Moines, Iowa.
11. 1888-89-\*DAVID DUDLEY FIELD, . . New York, New York.
12. 1889-90-\*HENRY HITCHCOCK, . . . St. Louis, Missouri.
13. 1890-91-SIMEON E. BALDWIN, . . . New Haven, Connecticut.
14. 1891-92-JOHN F. DILLON, . . . . . New York, New York.
15. 1892-93-\*JOHN RANDOLPH TUCKER, . Lexington, Virginia.
16. 1893-94-\*THOMAS M. COOLEY,<sup>3</sup> . . . Ann Arbor, Michigan.
17. 1894-95-JAMES C. CARTER, . . . . . New York, New York.
18. 1895-96-MOORFIELD STOREY, . . . . Boston, Massachusetts.
19. 1896-97-JAMES M. WOOLWORTH, . . Omaha, Nebraska.
20. 1897-98-WILLIAM WIRT HOWE, . . . New Orleans, Louisiana.
21. 1898-99-JOSEPH H. CHOATE,<sup>4</sup> . . . . New York, New York.
22. 1899-1900-CHARLES F. MANDERSON, . Omaha, Nebraska.
23. 1900-1901-EDMUND WETMORE, . . . New York, New York.
24. 1901-1902-U. M. ROSE, . . . . . Little Rock, Arkansas.
25. 1902-1903-FRANCIS RAWLE, . . . . Philadelphia, Pennsylvania.
26. 1903-1904-JAMES HAGERMAN, . . . St. Louis, Missouri.
27. 1904-1905-HENRY ST. GEO. TUCKER, Lexington, Virginia.

\* Deceased.

<sup>1</sup> At the Conference for organizing the Association in 1878, John H. B. Latrobe, of Maryland, was elected Temporary Chairman, and when the organization was completed, Benjamin H. Bristow, of Kentucky, was elected President of the Conference.

<sup>2</sup> In consequence of the death of Clarkson N. Potter, Francis Kernan, of New York, presided and prepared and delivered the President's Address in 1882.

<sup>3</sup> In consequence of the illness of Thomas M. Cooley, Samuel F. Hunt, of Ohio, presided and read the President's Address prepared by Judge Cooley in 1894.

<sup>4</sup> In consequence of the absence of Joseph H. Choate, as Ambassador to Great Britain, Charles F. Manderson, of Nebraska, presided and prepared and delivered the President's Address in 1899.



## LIST OF SECRETARIES.

1. 1878-93-\*EDWARD OTIS HINKLEY,<sup>1</sup> . . . Baltimore, Maryland.
2. 1893- JOHN HINKLEY,<sup>2</sup> . . . . . Baltimore, Maryland.

## LIST OF TREASURERS.

1. 1878-1902-FRANCIS RAWLE, . . . . . Philadelphia, Penna.
2. 1902- FREDERICK E. WADHAMS, . . Albany, New York.

## LIST OF EXECUTIVE COMMITTEE.

1. 1878-87-\*LUKE P. POLAND, . . . . . St. Johnsbury, Vermont.
2. 1878-88-SIMEON E. BALDWIN,<sup>3</sup> . . . . . New Haven, Connecticut.
3. 1878-80-\*WILLIAM A. FISHER, . . . . . Baltimore, Maryland.
4. 1880-85-\*WILLIAM ALLEN BUTLER, . . New York, New York.
5. 1885-90-\*CHARLES C. BONNEY,<sup>3</sup> . . . . . Chicago, Illinois.
6. 1887-96-GEORGE A. MERCER, . . . . . Savannah, Georgia.
7. 1888-90-\*JOHN RANDOLPH TUCKER, . Lexington, Virginia.
8. 1890-91-\*WILLIAM P. WELLS, . . . . . Detroit, Michigan.
9. 1890-99-ALFRED HEMENWAY, . . . . . Boston, Massachusetts.
10. 1891-95-\*BRADLEY G. SCHLEY, . . . . Milwaukee, Wisconsin.
11. 1895-99-CHARLES CLAFLIN ALLEN, . . St. Louis, Missouri.
12. 1896-97-WILLIAM WIRT HOWE, . . . . New Orleans, Louisiana.
13. 1897-1900-CHARLES NOBLE GREGORY, . Madison, Wisconsin.
14. 1899-1900-EDMUND WETMORE, . . . . . New York, New York.
15. 1899-1901-U. M. ROSE, . . . . . Little Rock, Arkansas.
16. 1899-1902-WILLIAM A. KETCHAM, . . Indianapolis, Indiana.
17. 1899-1902-HENRY ST. GEORGE TUCKER, Lexington, Virginia.
18. 1900-1903-RODNEY A. MERCUR, . . . . Towanda, Pennsylvania.
19. 1900-1903-CHARLES F. LIBBY, . . . . . Portland, Maine.
20. 1901-1903-JAMES HAGERMAN, . . . . . St. Louis, Missouri.
21. 1902- P. W. MELDRIM, . . . . . Savannah, Georgia.
22. 1902- PLATT ROGERS, . . . . . Denver, Colorado.
23. 1903- M. F. DICKINSON, . . . . . Boston, Massachusetts.
24. 1903- THEODORE S. GARNETT, . . Norfolk, Virginia.
25. 1903- WILLIAM P. BREEN, . . . . . Fort Wayne, Indiana.

\* Deceased.

<sup>1</sup> In 1878, Francis Rawle, of Pennsylvania, and Isaac Grant Thompson, of New York, acted as temporary Secretaries and as Secretaries of the Conference.

In 1886, Edward Otis Hinkley being absent, Walter George Smith, of Pennsylvania, acted as Secretary *pro tempore*.

<sup>2</sup> In 1898, John Hinkley being absent, George P. Wanty, of Michigan, acted as Secretary *pro tempore*.

<sup>3</sup> In 1888, at the first meeting of the Executive Committee after the adjournment of the Association, Simeon E. Baldwin resigned, and Charles C. Bonney was chosen to fill the vacancy under By-Law X.

# CONSTITUTION.

## NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law and encourage cordial intercourse among the members of the American Bar.

## QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership in this Association who shall be, and shall, for five years next preceding, have been a member in good standing of the Bar of any state, and who shall also be nominated as hereinafter provided.

## OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each state; a Secretary; a Treasurer; a Council, consisting of one member from each state (the Council shall be a standing committee on nominations for office); an Executive Committee, which shall consist of the President, the last ex-President, the Secretary and the Treasurer, all of whom shall be *ex officio* members, together with five other members, to be chosen by the Association, but no member shall be eligible to such choice more than three years in succession; and the President, and in his absence the ex-President, shall be the chairman of the committee.<sup>1</sup>

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<sup>1</sup> Amended August 19, 1898, and August 30, 1899.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each :

On Jurisprudence and Law Reform ;

On Judicial Administration and Remedial Procedure ;

On Legal Education and Admissions to the Bar ;

On Commercial Law ;

On International Law ;

On Publications ;

On Grievances ;

On Law Reporting and Digesting ;<sup>1</sup>

On Patent, Trade-Mark and Copyright Law ;<sup>2</sup>

On Insurance Law ;<sup>3</sup> and a committee

On Uniform State Laws, to consist of one member from each state.<sup>4</sup>

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purpose of such meeting.

The Vice-President for each state, and not less than two other members from such state, to be annually elected, shall constitute a Local Council for such state, to which shall be referred all applications for membership from such state. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each state and territory to report the deaths of members within the same to the said committee.

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<sup>1</sup> By amendment passed August 29, 1895.

<sup>2</sup> By amendment passed August 30, 1899.

<sup>3</sup> By amendment passed September 28, 1904.

<sup>4</sup> By amendment passed August 28, 1903.

## ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the state to the Bar of which the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from states having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any state; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same state with the person nominated, or, in their absence, by members from a neighboring state or states, to the effect that the person nominated has the qualifications required by the Constitution and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same state, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

During the period between the Annual Meetings, members may be elected by the Executive Committee upon the written nomination of a majority of the Vice-President and members of the Local Council of any state.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the committee of five appointed by such Confer-

ence, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

#### BY-LAWS.

ARTICLE VI.—By-Laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

#### DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

#### ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year. It shall be the duty of the member of the General Council from each state to report to the President, on or before the first day of May, annually, any such legislation in his state.

#### ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

## AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

## CONSTRUCTION.

ARTICLE XI.—The word "*state*," whenever used in this Constitution, shall be deemed to be equivalent to *state*, *territory* and the *District of Columbia*.

## BY-LAWS.

### MEETING OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II. The order of exercises at the Annual Meeting shall be as follows:

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees.
  - On Jurisprudence and Law Reform ;
  - On Judicial Administration and Remedial Procedure ;
  - On Legal Education and Admissions to the Bar ;
  - On Commercial Law ;
  - On International Law ;
  - On Publications ;
  - On Grievances ;
  - On Law Reporting and Digesting.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each State Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In states where no State Bar Association exists, any City or County Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country or of any state who are not members of the Association may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses and papers read before the Association may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies for each of such authors.

The Secretary and the Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges by which the *Transactions*



can be annually exchanged with those of other associations in foreign countries interested in jurisprudence or governmental affairs; and the Secretary shall exchange the *Transactions* with those of the State and Local Bar Associations; and all books thus acquired shall be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the former Association agrees to such deposit.

The Secretary shall send one copy of the Report of the proceedings of this Association to the President of the United States, and to each of the Judges of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Library of Congress, and the Library of the Supreme Court thereof, and to the governor, and to the Chief Judge of the court of last resort of each state, and to the State Librarian thereof, and to all public law libraries, and other principal public and college libraries in the United States, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read or address delivered shall be considered by the Association.

#### OFFICERS AND COMMITTEES.

VII. The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective Chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The traveling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee, out of such appropriation as to the Executive Committee may seem necessary in each case, on previous application in advance of its expenditure.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed, together with a draft of bill embodying the views of the committee, whenever legislation shall be proposed. Such report shall be distributed by

mail by the Secretary to all the members of the Association at least fifteen days before the Annual Meeting at which such report is proposed to be submitted. No legislation shall be recommended or approved except upon the report of a committee.<sup>1</sup>

It shall be the duty of each Vice-President and member of the General Council of this Association to endeavor to procure the enactment by the legislature of their state of each and every law recommended by the Association, and the Secretary shall furnish them with copies of each and every recommendation and draft of bill, when there shall be such draft; and whenever this Association shall by resolution recommend the enactment of any law or laws, the Secretary shall, as soon as possible, furnish a copy of the resolution to the President of each State Bar Association, with the request of this Association that such State Bar Association shall co-operate with the local Vice-President and member of the General Council of this Association in having a bill introduced in the legislature of its state containing the subject matter recommended by such resolution, and use proper means to procure the enactment of the same into law. In every state where there is no State Bar Association, a copy of such resolution with a similar request shall be sent to the President of the Bar Association of the principal city in such state: and in every instance where the form of bill has been recommended with the resolution, a copy of such form of bill shall also be sent with the resolution.

#### ANNUAL DUES.

XIII.—The Annual Dues shall be payable at the Annual Meeting in advance. If any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

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<sup>1</sup> As amended August 29, 1902.

A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of such back dues as the committee shall think equitable.<sup>1</sup> *Provided*, such restoration shall be recommended by a member of the Local Council of his state, or in their absence, at an Annual Meeting, by any two members of the Association.

XIV.—A Section of the Association, to be known as the Section of Legal Education, is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

Its object shall be the discussion of methods of legal education, and it may make recommendations to the Association, which shall be referred by the Association to the Committee on Legal Education.

The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

All members of the Association, who desire, may enroll themselves as members of the Section, and persons not eligible for membership in the Association, but who are engaged in teaching law, may be admitted to the privilege of the floor at any meeting of the Section, by vote of the Section.

The Section shall be organized by the appointment of a Chairman and Secretary at its first session; and a Chairman and Secretary shall thereafter be elected annually by the Section.

A Section of the Association, to be known as the Section of Patent, Trade-Mark<sup>2</sup> and Copyright Law, is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

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<sup>1</sup> As amended September 28, 1904.

<sup>2</sup> As amended August 30, 1899.

Its object shall be to discuss the subject of the law and practice relating to patents, trade-marks and copyrights. It may report to the Association; and matters relating to patents, trade-marks and copyrights may be referred to it.

The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

All members of the Association who desire may enroll themselves as members of the Section.

The Section shall be organized by the appointment of a Chairman and Secretary by the Section, and a Chairman and Secretary shall be thereafter annually elected by the Section for the year commencing upon the final adjournment of its meeting.

# OFFICERS.

1904-1905.

PRESIDENT,  
HENRY ST. GEORGE TUCKER,  
*Lexington, Virginia.*  
(*Washington, D. C.*)

SECRETARY,  
JOHN HINKLEY,  
*#15, North Charles Street, Baltimore, Maryland.*

TREASURER,  
FREDERICK E. WADHAMS,  
*37, Tweedle Building, Albany, New York.*

EXECUTIVE COMMITTEE.  
*EX OFFICIO.*  
HENRY ST. GEORGE TUCKER, PRESIDENT.  
JAMES HAGERMAN, LAST PRESIDENT.  
JOHN HINKLEY, SECRETARY.  
FREDERICK E. WADHAMS, TREASURER.

ELECTED MEMBERS.  
P. W. MELDRIM, *Savannah, Georgia.*  
PLATT ROGERS, *Denver, Colorado.*  
M. F. DICKINSON, *Boston, Massachusetts.*  
THEODORE S. GARNETT, *Norfolk, Virginia.*  
WILLIAM P. BREEN, *Fort Wayne, Indiana.*

## GENERAL COUNCIL.

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STATE.	NAME.	RESIDENCE.
ALABAMA, . . . . .	WILLIAM H. THOMAS, . . .	Montgomery.
ALASKA TERRITORY, .	ROBERT W. JENNINGS, . .	Skagway.
ARIZONA TERRITORY, .	WILLIAM H. BARNES, . . .	Tucson.
ARKANSAS, . . . . .	JOHN FLETCHER, . . . . .	Little Rock.
CALIFORNIA, . . . . .	CHARLES MONROE, . . . . .	Los Angeles.
COLORADO, . . . . .	LUCIUS W. HOYT, . . . . .	Denver.
CONNECTICUT, . . . .	SIMEON E. BALDWIN, . . .	New Haven.
DELAWARE, . . . . .	JOHN P. NIELDS, . . . . .	Wilmington.
DISTRICT OF COLUMBIA,	ALDIS B. BROWNE, . . . .	Washington.
FLORIDA, . . . . .	R. W. WILLIAMS, . . . . .	Tallahassee.
GEORGIA, . . . . .	BURTON SMITH, . . . . .	Atlanta.
HAWAII TERRITORY, .	DAVID L. WITHINGTON, . .	Honolulu.
IDAHO, . . . . .	WILLIAM W. WOODS, . . .	Wallace.
ILLINOIS, . . . . .	EDWIN BURRITT SMITH, . .	Chicago.
INDIAN TERRITORY, .	CLIFFORD L. JACKSON, . . .	Muskogee.
INDIANA, . . . . .	WILLIAM P. BREEN, . . .	Fort Wayne.
IOWA, . . . . .	CHARLES A. DUDLEY, . . .	Des Moines.
KANSAS, . . . . .	JOHN D. MILLIKEN, . . .	McPherson.
KENTUCKY, . . . . .	WILLIAM H. MACKOY, . . .	Covington.
LOUISIANA, . . . . .	THOMAS J. KERNAN, . . . .	Baton Rouge.
MAINE, . . . . .	CHARLES F. LIBBY, . . . .	Portland.
MARYLAND, . . . . .	RICHARD M. VENABLE, . . .	Baltimore.
MASSACHUSETTS, . . .	JAMES BARR AMES, . . . .	Cambridge.
MICHIGAN, . . . . .	WILLIAM L. JANUARY, . . .	Detroit.
MINNESOTA, . . . . .	FREDERICK V. BROWN, . . .	Minneapolis.
MISSISSIPPI, . . . . .	E. J. BOWERS, . . . . .	Bay St. Louis.
MISSOURI, . . . . .	SELDEN P. SPENCER, . . . .	St. Louis.
MONTANA, . . . . .	WILBUR F. SANDERS, . . . .	Helena.
NEBRASKA, . . . . .	RALPH W. BRECKENRIDGE, .	Omaha.
NEVADA, . . . . .	FRANCIS M. HUFFAKER, . .	Virginia City.
NEW HAMPSHIRE, . . .	IRA A. CHASE, . . . . .	Bristol.

STATE.	NAME.	RESIDENCE.
NEW JERSEY, . . . .	JAMES J. BERGEN, . . . .	Somerville.
NEW MEXICO TER., . .	THOMAS B. CATRON, . . . .	Santa Fé.
NEW YORK, . . . . .	WALTER S. LOGAN, . . . .	New York.
NORTH CAROLINA, . .	J. CRAWFORD BIGGS, . . . .	Durham.
NORTH DAKOTA, . . .	ANDREW A. BRUCE, . . . .	Grand Forks.
OHIO, . . . . .	FRANCIS B. JAMES, . . . .	Cincinnati.
OKLAHOMA TER., . .	ERNEST E. BLAKE, . . . .	El Reno.
OREGON,. . . . .	R. S. BEAN, . . . . .	Salem.
PENNSYLVANIA, . . .	W. U. HENSEL, . . . . .	Lancaster.
PHILIPPINE ISLANDS,	DAVID W. YANCEY, . . . .	Manila.
RHODE ISLAND, . . .	AMASA M. EATON, <i>Ch'n</i> , . .	Providence.
SOUTH CAROLINA, . .	T. MOULTRIE MORDECAI, . .	Charleston.
SOUTH DAKOTA, . . .	COE I. CRAWFORD, . . . .	Huron.
TENNESSEE, . . . . .	HENRY H. INGERSOLL, . . .	Knoxville.
TEXAS, . . . . .	M. A. SPOONTS, . . . . .	Fort Worth.
UTAH, . . . . .	CHARLES S. VARIAN, . . . .	Salt Lake City.
VERMONT, . . . . .	ELIHU B. TAFT, . . . . .	Burlington.
VIRGINIA, . . . . .	S. GRIFFIN, . . . . .	Bedford City.
WASHINGTON, . . . .	C. H. HANFORD, . . . . .	Seattle.
WEST VIRGINIA, . . .	GEORGE E. PRICE, . . . . .	Charleston.
WISCONSIN, . . . . .	BURR W. JONES, . . . . .	Madison.
WYOMING, . . . . .	CHARLES N. POTTER, . . . .	Cheyenne.



**VICE-PRESIDENTS**  
**AND**  
**MEMBERS OF LOCAL COUNCILS.**  
**ELECTED 1904**

**ALABAMA.**

Vice-President, LAWRENCE COOPER, . . . . Huntsville.  
Local Council, SAMUEL D. WEAKLEY, . . . Birmingham.  
FRED. S. BALL, . . . . . Montgomery.  
OSCAR R. HUNDLEY, . . . Huntsville.  
EDWARD DEGRAFFENRIED, Greensboro.  
ALEXANDER T. LONDON, . . Birmingham.

**ALASKA TERRITORY.**

Vice-President, J. G. PRICE, . . . . . Skagway.  
Local Council, ROBERT W. JENNINGS, . . Skagway.  
W. J. HILLS, . . . . . Juneau.

**ARIZONA TERRITORY.**

Vice-President, JOHN C. HERNDON, . . . . Prescott.  
Local Council, WILLIAM H. BARNES, . . . Tucson.  
EVERETT E. ELLINWOOD, . Prescott.

**ARKANSAS.**

Vice-President, JOSEPH M. HILL, . . . . . Fort Smith.  
Local Council, JAMES F. READ, . . . . . Fort Smith.  
ASHLEY COCKRILL, . . . . Little Rock.  
GEORGE B. ROSE, . . . . . Little Rock.  
JOSEPH M. STAYTON, . . . . Newport.

**CALIFORNIA.**

Vice-President, WILLIAM J. HUNSAKER, . . Los Angeles.  
Local Council, LYNN HELM, . . . . . Los Angeles.  
WARREN OLNEY, . . . . . San Francisco.  
W. H. CHICKERING, . . . . . San Francisco.  
OSCAR A. TRIPPETT, . . . . Los Angeles.  
EDWARD C. BAILEY, . . . . Los Angeles.

## COLORADO.

Vice-President, LUTHER M. GODDARD, . . . Denver.  
 Local Council, CHARLES E. GAST, . . . Pueblo.  
                   HORACE G. LUNT, . . . Colorado Springs.  
                   HUGH BUTLER, . . . Denver.  
                   CALDWELL YEAMAN, . . . Denver.  
                   H. N. HAYNES, . . . Greeley.

## CONNECTICUT.

Vice-President, LEWIS E. STANTON, . . . Hartford.  
 Local Council, TALCOTT H. RUSSELL, . . . New Haven.  
                   GEORGE D. WATROUS, . . . New Haven.  
                   EDWIN B. GAGER, . . . Derby.  
                   JAMES H. WEBB, . . . New Haven.

## DELAWARE.

Vice-President, GEORGE GRAY, . . . Wilmington.  
 Local Council, WILLARD SAULSBURY, . . . Wilmington.

## DISTRICT OF COLUMBIA.

Vice-President, MELVILLE CHURCH, . . . Washington.  
 Local Council, NATHANIEL WILSON, . . . Washington.  
                   HENRY E. DAVIS, . . . Washington.  
                   ARTHUR P. GREELEY, . . . Washington.  
                   SAMUEL MADDOX, . . . Washington.  
                   CHAPIN BROWN, . . . Washington.  
                   J. NOTA MCGILL, . . . Washington.  
                   CHANNING RUDD, . . . Washington.  
                   ROBERT J. FISHER, . . . Washington.

## FLORIDA.

Vice-President, JOHN C. AVERY, . . . Pensacola.  
 Local Council, LOUIS C. MASSEY, . . . Orlando.  
                   C. D. RINEHART, . . . Jacksonville.  
                   BENJAMIN S. LIDDON, . . . Marianna.  
                   WILLIAM A. BLOUNT, . . . Pensacola.  
                   DUNCAN U. FLETCHER, . . . Jacksonville.  
                   WILLIAM H. BAKER, . . . Jacksonville.  
                   GEORGE C. BEDELL, . . . Jacksonville.

## GEORGIA.

Vice-President, HAMILTON McWHORTER, . . . Athens.  
 Local Council, BENJAMIN F. ABBOTT, . . . Atlanta.  
                   JOHN J. STRICKLAND, . . . Athens.  
                   JOHN E. DONALSON, . . . Bainbridge.

**HAWAII TERRITORY.**

Vice-President, (vacant).

Local Council, LYLE A. DICKEY, . . . . . Honolulu.

WILLIAM O. SMITH, . . . . . Honolulu.

**IDAHO.**

Vice-President, WILLIAM W. WOODS, . . . . . Wallace.

Local Council, ALEXANDER E. MAYHEW, . Wallace.

**ILLINOIS.**

Vice-President, GEORGE A. FOLLANSBEE, . Chicago.

Local Council, STEPHEN S. GREGORY, . . . Chicago.

ROBERT H. PARKINSON, . . Chicago.

JOHN H. WIGMORE, . . . . . Chicago.

GEORGE T. PAGE, . . . . . Peoria.

E. B. SHERMAN, . . . . . Chicago.

JULIAN W. MACK, . . . . . Chicago.

OLIVER A. HARKER, . . . . . Carbondale.

WILLIAM R. CURRAN, . . . . . Pekin.

**INDIAN TERRITORY.**

Vice-President, JOSEPH G. RALLS, . . . . . Atoka.

Local Council, S. T. BLEDSOE, . . . . . Ardmore.

W. H. KORNEGAY, . . . . . Vinita.

JAMES S. DAVENPORT, . . . Vinita.

J. F. SHARP, . . . . . Purcell.

ROBERT L. WILLIAMS, . . . Durant.

WALTER A. LEDBETTER, . Ardmore.

S. GUERRIER, . . . . . So. McAlester.

PRESTON C. WEST, . . . . . Muskogee.

**INDIANA.**

Vice-President, TRUMAN F. PALMER, . . . . . Monticello.

Local Council, WILLIAM A. KETCHAM, . . Indianapolis.

THEODORE P. DAVIS, . . Indianapolis.

SAMUEL O. PICKENS, . . . Indianapolis.

JAMES E. ROSE, . . . . . Auburn.

CHARLES MARTINDALE, . . Indianapolis.

JOHN MORRIS, JR., . . . . . Fort Wayne.

LOUIS NEWBERGER, . . . Indianapolis.

DANIEL FRASER, . . . . . Fowler.

HARRY B. TUTHILL, . . . . . Michigan City.

THOMAS E. ELLISON, . . . . Fort Wayne.

WILLIAM J. VESEY, . . . . Fort Wayne.

## IOWA.

Vice-President, JAMES O. CROSBY, . . . . . Garnavillo.  
 Local Council, HORATIO F. DALE, . . . . . Des Moines.  
 ISAAC N. FLICKINGER, . . . . . Council Bluffs.

## KANSAS.

Vice-President, CHARLES BLOOD SMITH, . . . . . Topeka.  
 Local Council, FRANK L. MARTIN, . . . . . Hutchinson.  
 WILLIAM E. HIGGINS, . . . . . Lawrence.  
 ROBERT WILSON TURNER, . . . . . Mankato.  
 JOHN JACKSON JONES, . . . . . Chanute.

## KENTUCKY.

Vice-President, E. F. TRABUE, . . . . . Louisville.  
 Local Council, HENRY L. STONE, . . . . . Louisville.  
 ALBERT S. BRANDEIS, . . . . . Louisville.  
 JOHN G. TOMLIN, . . . . . Walton.  
 ROBERT A. THORNTON, . . . . . Lexington.

## LOUISIANA.

Vice-President, ERNEST B. KRUTTSCHNITT, New Orleans.  
 Local Council, ERNEST T. FLORANCE, . . . . . New Orleans.  
 EDWIN T. MERRICK, . . . . . New Orleans.  
 W. O. HART, . . . . . New Orleans.  
 E. W. SUTHERLIN, . . . . . Shreveport.  
 J. R. THORNTON, . . . . . Alexandria.  
 W. S. BENEDICT, . . . . . New Orleans.

## MAINE.

Vice-President, FRANK M. HIGGINS, . . . . . Limerick.  
 Local Council, HANNIBAL E. HAMLIN, . . . . . Ellsworth.  
 FREDERICK A. POWERS, . . . . . Houlton.  
 WILLIAM B. SKELTON, . . . . . Lewiston.  
 CHARLES E. LITTLEFIELD, . . . . . Rockland.  
 JOHN B. MADIGAN, . . . . . Houlton.

## MARYLAND.

Vice-President, THOMAS J. MORRIS, . . . . . Baltimore.  
 Local Council, JOHN P. BRISCOE, . . . . . Prince Frederick  
 GEORGE M. SHARP, . . . . . Baltimore.  
 CHARLES E. FINK, . . . . . Westminster.  
 STEVENSON A. WILLIAMS, . . . . . Bel Air.  
 M. R. WALTER, . . . . . Baltimore.  
 ALFRED S. NILES, . . . . . Baltimore.

**MASSACHUSETTS.**

Vice-President, ALFRED HEMENWAY, . . . Boston.  
 Local Council, SAMUEL C. BENNETT, . . . Boston.  
                   WILLIAM V. KELLEN, . . . Boston.  
                   JOSEPH HENRY BEALE, JR., Cambridge.

**MICHIGAN.**

Vice-President, JOSEPH B. MOORE, . . . . . Lansing.  
 Local Council, ADOLPH SLOMAN, . . . . . Detroit.  
                   CHARLES M. WILSON, . . . . . Grand Rapids.  
                   DALLAS BOUDEMAN, . . . . . Kalamazoo.  
                   JAMES F. BARNETT, . . . . . Grand Rapids.  
                   HORACE L. WILGUS, . . . . . Ann Arbor.

**MINNESOTA.**

Vice-President, ROME G. BROWN, . . . . . Minneapolis.  
 Local Council, DANIEL FISH, . . . . . Minneapolis.  
                   AMBROSE TIGHE, . . . . . St. Paul.  
                   J. L. WASHBURN, . . . . . Duluth.

**MISSISSIPPI.**

Vice-President, C. B. HOWRY ( Wash., D. C. ), . Oxford.  
 Local Council, R. H. THOMPSON, . . . . . Jackson.

**MISSOURI.**

Vice-President, FRANK HAGERMAN, . . . . . Kansas City.  
 Local Council, JACOB KLEIN, . . . . . St. Louis.  
                   CHAS. CLAFLIN ALLEN, . . . . . St. Louis.  
                   FRANK TITUS, . . . . . Kansas City.  
                   THOMAS H. REYNOLDS, . . . . . Kansas City.  
                   ALEXANDER NEW, . . . . . Kansas City.  
                   SHEPARD BARCLAY, . . . . . St. Louis.  
                   WALTER B. DOUGLAS, . . . . . St. Louis.  
                   JOHN D. LAWSON, . . . . . Columbia.  
                   EDWARD W. HINTON, . . . . . Columbia.

**MONTANA.**

Vice-President, (vacant).  
 Local Council, WILLIAM SCALLON, . . . . . Butte.

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YOUNG, GEORGE B., . . . . .	St. Paul, Minn.
YOUNG, GEORGE R., . . . . .	Dayton, Ohio.
YOUNG, HENRY E., . . . . .	Charleston, S. C.
YOUNKER, B. A., . . . . .	Des Moines, Iowa.
ZEISLER, SIGMUND, . . . . .	Chicago, Ill.

# STATE LIST OF MEMBERS

## 1904-1905.

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HUNDLEY, OSCAR R., . . . . .	Huntsville.
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RUSSELL, EDWARD L., . . . . .	Mobile.
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WILLETT, JOSEPH J., . . . . .	Anniston.

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### ARIZONA TERRITORY.

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HERNDON, JOHN C., . . . . .	Prescott.
KENT, EDWARD, . . . . .	Phoenix.
MORRISON, ROBERT E., . . . . .	Prescott.

### ARKANSAS.

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COCKRILL, ASHLEY, . . . . .	Little Rock.
COHN, MORRIS M., . . . . .	Little Rock.
DOOLEY, P. C., . . . . .	Little Rock.
DUVAL, BEN. T., . . . . .	Fort Smith.
FITZHUGH, HENRY L., . . . . .	Fort Smith.
FLETCHER, JOHN, . . . . .	Little Rock.
HICKS, JOHN T., . . . . .	Little Rock.

## ARKANSAS.—Continued.

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ROSE, U. M., . . . . .	Little Rock.
SCOTT, N. B., . . . . .	Lake Village.
SMITH, WILLIAM B., . . . . .	Little Rock.
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TURNER, JESSE, . . . . .	Van Buren.
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YOUMANS, FRANK A., . . . . .	Fort Smith.

## CALIFORNIA.

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HAWKINS, JOHN J., . . . . .	Los Angeles.
HELM, LYNN, . . . . .	Los Angeles.
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OTIS, GEORGE E., . . . . .	San Bernardino.
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TITUS, H. L., . . . . .	San Diego.
TRASK, WALTER J., . . . . .	Los Angeles.
TRIPPET, OSCAR A., . . . . .	Los Angeles.
WORKS, JOHN D., . . . . .	Los Angeles.

## COLORADO.

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BLOOD, JAMES H., . . . . .	Denver.
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FLEMING, JOHN D., . . . . .	Boulder.
FOOTE, ROBERT E., . . . . .	Denver.
FOWLER, A. J., . . . . .	Denver.
FOWLER, JO. A., . . . . .	Denver.
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GUNTER, JULIUS C., . . . . .	Denver.
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HALL, HENRY C., . . . . .	Colorado Springs.
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HARRISON, WILLIAM B., . . . . .	Denver.
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HAYT, CHARLES D., . . . . .	Denver.
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MCCREERY, JAMES W., . . . . .	Greeley.
McKNIGHT, RICHARD, . . . . .	Denver.
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THOMAS, CHARLES S., . . . . .	Denver.
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VAILE, JOEL F., . . . . .	Denver.
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VATES, WILLIAM B., . . . . .	Pueblo.
WADLEY, WILLIAM H., . . . . .	Denver.
WALLING, STUART D., . . . . .	Denver.
WARD, THOMAS, JR., . . . . .	Denver.
WATERMAN, CHARLES W., . . . . .	Denver.
WHITE, S. HARRISON, . . . . .	Pueblo.
WHITELEY, RICHARD H., . . . . .	Boulder.
WOLCOTT, EDWARD O., . . . . .	Denver.
YEAMAN, CALDWELL, . . . . .	Denver.

## CONNECTICUT.

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BALDWIN, SIMEON E., . . . . .	New Haven.
BEARDSLEY, MORRIS B., . . . . .	Bridgeport.
BEERS, GEORGE E., . . . . .	New Haven.
BRISCOE, CHARLES H., . . . . .	Hartford.
CLARK, JAMES GARDNER, . . . . .	New Haven.
CONANT, GEORGE A., . . . . .	Hartford.
CULVER, M. EUGENE, . . . . .	Middletown.
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GAGER, EDWIN B., . . . . .	Derby.
HARRIMAN, EDWARD AVERY, . . . . .	Derby.
HARRISON, LYNDE, . . . . .	New Haven.
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HYDE, WILLIAM W., . . . . .	Hartford.
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KNAPP, HOWARD H., . . . . .	Bridgeport.
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NEWTON, HENRY G., . . . . .	New Haven.
PECK, EPAPHRODITUS, . . . . .	Bristol.
PHELPS, CHARLES, . . . . .	Rockville.
RAYNOLDS, EDWARD V., . . . . .	New Haven.

## CONNECTICUT.—Continued.

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ROGERS, EDWARD H., . . . . .	New Haven.
ROGERS, HENRY WADE, . . . . .	New Haven.
RUSSELL, TALCOTT H., . . . . .	New Haven.
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SEARLES, CHARLES E., . . . . .	Putnam.
STANTON, LEWIS E., . . . . .	Hartford.
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TORRANCE, DAVID, . . . . .	Derby.
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TUTTLE, J. BIRNEY, . . . . .	New Haven.
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WARNER, DONALD T., . . . . .	Salisbury.
WATROUS, GEORGE D., . . . . .	New Haven.
WEBB, JAMES H., . . . . .	New Haven.
WHITE, HENRY C., . . . . .	New Haven.
WILLCOX, W. F., . . . . .	Chester.
WILLIAMS, WILLIAM H., . . . . .	Derby.
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WOOLSEY, THEO. S., . . . . .	New Haven.
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## DELAWARE.

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## FLORIDA.

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BEDELL, GEORGE C., . . . . .	Jacksonville.
BISBEE, HORATIO, . . . . .	Jacksonville.
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HARTRIDGE, JOHN E., . . . . .	Jacksonville.
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## GEORGIA.

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## GEORGIA.—Continued.

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BROWN, EDWARD T., . . . . .	Atlanta.
CANN, GEORGE T., . . . . .	Savannah.
CANN, J. FERRIS, . . . . .	Savannah.
CHARLTON, WALTER G., . . . . .	Savannah.
COBB, A. WARD, . . . . .	Atlanta.
CROVATT, A. J., . . . . .	Brunswick.
CUMMING, JOSEPH B., . . . . .	Augusta.
CUNNINGHAM, HENRY C., . . . . .	Savannah.
CUNNINGHAM, T. M., Jr., . . . . .	Savannah.
DALEY, A. F., . . . . .	Wrightsville.
DE LACY, JOHN F., . . . . .	Eastman.
DONALSON, JOHN E., . . . . .	Bainbridge.
DUBIGNON, FLEMING G., . . . . .	Atlanta.
ELLIS, W. D., . . . . .	Atlanta.
ERWIN, R. G., . . . . .	Savannah.
FOGARTY, D. G., . . . . .	Augusta.
GARRARD, LOUIS F., . . . . .	Columbus.
GOETCHIUS, HENRY R., . . . . .	Columbus.
GORDON, WILLIAM W., JR., . . . . .	Savannah.
HAMMOND, WILLIAM R., . . . . .	Atlanta.
HARRIS, MARION W., . . . . .	Macon.
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LAMAR, JOSEPH R., . . . . .	Augusta.
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LEAKEN, WILLIAM R., . . . . .	Savannah.
MACKALL, WILLIAM W., . . . . .	Savannah.
MELDRIM, P. W., . . . . .	Savannah.
MERRILL, JOSEPH HANSELL, . . . . .	Thomasville.
MILLER, FRANK H., . . . . .	Augusta.
MILLER, WILLIAM K., . . . . .	Augusta.
MICALPIN, HENRY, . . . . .	Savannah.
MCINTOSH, J. R., . . . . .	Atlanta.
MCWHORTER, HAMILTON, . . . . .	Athens.
OWENS, GEORGE W., . . . . .	Savannah.
PRESSLY, CHARLES P., . . . . .	Augusta.
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SMITH, BURTON, . . . . .	Atlanta.
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## HAWAII TERRITORY.

CASTLE, WILLIAM R., . . . . .	Honolulu.
DICKEY, LYLE A., . . . . .	Honolulu.
SMITH, WILLIAM O., . . . . .	Honolulu.
WITHINGTON, DAVID L., . . . . .	Honolulu.

## IDAHO.

BABB, JAMES E., . . . . .	Lewiston.
MAYHEW, ALEXANDER E., . . . . .	Wallace.
MERRIMAN, CHARLES A., . . . . .	Idaho Falls.
WOODS, WILLIAM W., . . . . .	Wallace.

## ILLINOIS.

BALDWIN, JESSE A., . . . . .	Chicago.
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BLAIR, FRANK PRESTON, . . . . .	Chicago.
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BROWN, CHARLES A., . . . . .	Chicago.
BROWN, TAYLOR E., . . . . .	Chicago.
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CATE, ALBION, . . . . .	Chicago.
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DANIELS, FRANCIS B., . . . . .	Chicago.
DENEEN, CHARLES S., . . . . .	Chicago.
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DICKINSON, J. M., . . . . .	Chicago.
DREW, WILLIAM L., . . . . .	Urbana.
DYRENFORTH, PHILIP C., . . . . .	Chicago.
DYRENFORTH, WILLIAM H., . . . . .	Chicago.
EASTMAN, SIDNEY C., . . . . .	Chicago.
FIELD, HEMAN H., . . . . .	Chicago.
FOLLANSBEE, GEORGE A., . . . . .	Chicago.
FROST, E. ALLEN, . . . . .	Chicago.
FURNESS, WILLIAM ELIOT, . . . . .	Chicago.

## ILLINOIS.—Continued.

GARTSIDE, JOHN M., . . . . .	Chicago.
GIBBONS, JOHN, . . . . .	Chicago.
GREGORY, STEPHEN S., . . . . .	Chicago. ♀
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HARDING, CHARLES F., . . . . .	Chicago.
HARKER, OLIVER A., . . . . .	Carbondale.
HEBARD, FREDERIC S., . . . . .	Chicago.
HERRICK, JOHN J., . . . . .	Chicago.
HILL, LYSANDER, . . . . .	Chicago.
HOLDOM, JESSE, . . . . .	Chicago.
HUNTER, WILLIAM R., . . . . .	Kankakee.
HYDE, JAMES W., . . . . .	Chicago.
JOHNSON, FRANK ASBURY, . . . . .	Chicago.
JUNKIN, FRANCIS T. A., . . . . .	Chicago.
KARCHER, GEORGE H., . . . . .	Chicago.
KENNA, EDWARD D., . . . . .	Chicago.
KRAUTHOFF, L. C., . . . . .	Chicago.
KRETZINGER, GEORGE W., . . . . .	Chicago.
LACKNER, FRANCIS, . . . . .	Chicago.
LAWSON, WILLIAM C., . . . . .	Chicago.
LEE, BLEWETT, . . . . .	Chicago.
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MANNING, WILLIAM J., . . . . .	Chicago.
MARTIN, HORACE H., . . . . .	Chicago.
MATHER, ROBERT, . . . . .	Chicago.
MECHEM, FLOYD R., . . . . .	Chicago.
MERRICK, GEORGE PECK, . . . . .	Chicago.
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RECTOR, EDWARD, . . . . .	Chicago.
REED, FRANK F., . . . . .	Chicago.
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WILLARD, NORMAN P., . . . . .	Chicago.



## ILLINOIS.—Continued.

WILLIAMS, E. P., . . . . .	Galesburg.
WILLIAMS, GUY P., . . . . .	Galesburg.
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## INDIAN TERRITORY.

BLEDSON, S. T., . . . . .	Ardmore.
DAVENPORT, JAMES S., . . . . .	Vinita.
GUERRIER, S., . . . . .	South McAlester.
JACKSON, CLIFFORD L., . . . . .	Muskogee.
KORNEGAY, W. H., . . . . .	Vinita.
LEDBETTER, WALTER A., . . . . .	Ardmore.
RALLS, JOSEPH G., . . . . .	Atoka.
SHARP, J. F., . . . . .	Purcell.
WEST, PRESTON C., . . . . .	Muskogee.
WILLIAMS, ROBERT L., . . . . .	Durant.

## INDIANA.

BARTHOLOMEW, PLINY W., . . . . .	Indianapolis.
BEAUCHAMP, ROBERT B., . . . . .	Tipton.
BRADFORD, CHESTER, . . . . .	Indianapolis.
BRADY, ARTHUR W., . . . . .	Anderson.
BREEN, WILLIAM P., . . . . .	Fort Wayne.
BUSHNELL, WILLIAM S., . . . . .	Monticello.
BUTLER, NOBLE C., . . . . .	Indianapolis.
CARSON, JOHN F., . . . . .	Indianapolis.
CHAMBERS, SMILEY N., . . . . .	Indianapolis.
CHIPMAN, MARCELLUS A., . . . . .	Anderson.
CLAPHAM, WILLIAM E., . . . . .	Bloomington.
CLARKE, GEORGE E., . . . . .	South Bend.
DANIELS, EDWARD, . . . . .	Indianapolis.
DAVIS, SYDNEY B., . . . . .	Terre Haute.
DAVIS, THEODORE P., . . . . .	Indianapolis.
DYE, JOHN T., . . . . .	Indianapolis.
ELLIOTT, WILLIAM F., . . . . .	Indianapolis.
ELLISON, THOMAS E., . . . . .	Fort Wayne.
EVANS, ROWLAND, . . . . .	Indianapolis.
EWING, JOHN G., . . . . .	Notre Dame.
FAIRBANKS, CHARLES W., . . . . .	Indianapolis.
FESLER, JAMES WILLIAM, . . . . .	Indianapolis.
FRASER, DANIEL, . . . . .	Fowler.
FREY, PHILIP W., . . . . .	Evansville.

## INDIANA.—Continued.

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GOULD, JOHN H., . . . . .	Delphi.
HAMMOND, EDWIN P., . . . . .	La Fayette.
HAWKINS, ROSCOE O., . . . . .	Indianapolis.
HEATON, OWEN N., . . . . .	Fort Wayne.
HOGATE, ENOCH G., . . . . .	Bloomington.
INGLEB, FRANCIS M., . . . . .	Indianapolis.
ISHAM, WILLIAM H., . . . . .	Fowler.
JAMESON, OVID B., . . . . .	Indianapolis.
JOSS, FREDERICK A., . . . . .	Indianapolis.
KELLEY, WILLIAM H., . . . . .	Richmond.
KERN, JOHN W., . . . . .	Indianapolis.
KETCHAM, WILLIAM A., . . . . .	Indianapolis.
LESH, U. S., . . . . .	Huntington.
LOCKWOOD, VIRGIL H., . . . . .	Indianapolis.
MARSH, EPHRAIM, . . . . .	Greenfield.
MARTINDALE, CHARLES, . . . . .	Indianapolis.
MILLER, CHARLES W., . . . . .	Goshen.
MONTGOMERY, OSCAR H., . . . . .	Seymour.
MOORES, CHARLES W., . . . . .	Indianapolis.
MOORES, MERRILL, . . . . .	Indianapolis.
MORRIS, JOHN, JR., . . . . .	Fort Wayne.
MYERS, QUINCY A., . . . . .	Logansport.
NEWBERGER, LOUIS, . . . . .	Indianapolis.
NOEL, JAMES W., . . . . .	Indianapolis.
PALMER, TRUMAN F., . . . . .	Monticello.
PENFIELD, W. L. (State Dept., Washington, D.C.),	Auburn.
PICKENS, SAMUEL O., . . . . .	Indianapolis.
PICKENS, WILLIAM A., . . . . .	Indianapolis.
REINHARD, GEORGE L., . . . . .	Bloomington.
ROBY, FRANK S., . . . . .	Auburn.
ROSE, JAMES E., . . . . .	Auburn.
ROSE, JAMES H., . . . . .	Auburn.
RUPE, JOHN L., . . . . .	Richmond.
SAYLER, SAMUEL M., . . . . .	Huntington.
SELLERS, EMORY B., . . . . .	Monticello.
SIMMS, DAN W., . . . . .	Lafayette.
SMITH, ALONZO GREENE, . . . . .	Indianapolis.
SMITH, CHARLES W., . . . . .	Indianapolis.
SNYDER, CHARLES M., . . . . .	Fowler.
SPENCER, CHARLES C., . . . . .	Monticello.
STEVENSON, ELMER E., . . . . .	Indianapolis.
STUART, WILLIAM V., . . . . .	La Fayette.
SWAN, ELBERT M., . . . . .	Rockport.

## INDIANA.—Continued.

TAYLOR, R. S.,	Fort Wayne.
TAYLOR, WILLIAM L.,	Indianapolis.
TUTHILL, HARRY B.,	Michigan City.
VESEY, ALLEN J.,	Fort Wayne.
VESEY, WILLIAM J.,	Fort Wayne.
VINTON, HENRY H.,	La Fayette.
WARD, WILBERT,	South Bend.
WILLIAMS, JOHN G.,	Indianapolis.
WILSON, JOHN R.,	Indianapolis.
WOOD, SOLOMON A.,	Fort Wayne.

## IOWA.

ALLISON, WILLIAM B.,	Dubuque.
BALDWIN, W. W.,	Burlington.
BURK, W. D.,	Muscatine.
CANADAY, WALTER,	Madrid.
CARR, E. M.,	Manchester.
CLIGGETT, JOHN,	Mason City.
COLE, CHESTER C.,	Des Moines.
CRAIG, JOHN E.,	Keokuk.
CROSBY, JAMES O.,	Garnavillo.
CUMMINS, A. B.,	Des Moines.
DALE, HORATIO F.,	Des Moines.
DAVIS, JAMES C.,	Des Moines.
DEERY, JOHN,	Dubuque.
DEVITT, J. F.,	Muscatine.
DILLE, JOHN I.,	Des Moines.
DUDLEY, CHARLES A.,	Des Moines.
EATON, WILLIAM L.,	Osage.
FLICKINGER, ISAAC N.,	Council Bluffs.
GREGORY, CHARLES NOBLE,	Iowa City.
GUERNSEY, NATHANIEL T.,	Des Moines.
HENDERSON, DAVID B.,	Dubuque.
HOWELL, WILLIAM C.,	Keokuk.
HUNTER, ROBERT,	Sioux City.
KINNE, L. G.,	Des Moines.
KNIGHT, W. J.,	Dubuque.
LENEHAN, DANIEL F.,	Dubuque.
LONGUEVILLE, J. C.,	Dubuque.
MOFFIT, JOHN T.,	Tipton.
MURPHY, DANIEL D.,	Elkader.
MCCLAIN, EMLIN,	Iowa City.
MCCONLOGUE, JAMES H.,	Mason City.

## IOWA.—Continued.

PARSONS, JAMES M., . . . . .	Rock Rapids.
QUARTON, WILLIAM B., . . . . .	Algona.
REED, H. T., . . . . .	Cresco.
ROBERTS, W. J., . . . . .	Keokuk.
ROBINSON, GIFFORD S., . . . . .	Sioux City.
SAWYER, HAZEN I., . . . . .	Keokuk.
SEEVERS, GEORGE W., . . . . .	Oskaloosa.
SHERWIN, JOHN C., . . . . .	Mason City.
SHIRAS, OLIVER P., . . . . .	Dubuque.
STILLMAN, WALTER S. (Omaha, Neb.), . . . . .	Council Bluffs.
SWETTING, ERNEST V., . . . . .	Algona.
SWISHER, A. E., . . . . .	Iowa City.
WADE, M. J., . . . . .	Iowa City.
WHITMORE, CHESTER W., . . . . .	Ottumwa.
WRIGHT, CARROLL, . . . . .	Des Moines.
YOUNKER, B. A., . . . . .	Des Moines.

## KANSAS.

CAMPBELL, PHILIP P., . . . . .	Pittsburg.
CONANT, ERNEST B., . . . . .	Topeka.
ECKSTEIN, O. G., . . . . .	Wichita.
GREEN, J. W., . . . . .	Lawrence.
HIGGINS, WILLIAM E., . . . . .	Lawrence.
HOLT, WILLIAM G., . . . . .	Kansas City.
JONES, JOHN J., . . . . .	Chanute.
LARIMER, JEREMIAH B., . . . . .	Topeka.
MARTIN, FRANK L., . . . . .	Hutchinson.
MILLIKEN, JOHN D., . . . . .	McPherson.
MOORE, J. McCABE, . . . . .	Kansas City.
PERKINS, LUCIUS H., . . . . .	Lawrence.
ROSSINGTON, WILLIAM H., . . . . .	Topeka.
SMITH, CHARLES B., . . . . .	Topeka.
TURNER, ROBERT WILSON, . . . . .	Mankato.
WAGGENER, BALIE P., . . . . .	Atchison.
WAGGENER, WILLIAM P., . . . . .	Atchison.
WALL, THOMAS B., . . . . .	Wichita.
WHITESIDE, HOUSTON, . . . . .	Hutchinson.
WILLIAMS, CHARLES M., . . . . .	Hutchinson.

## KENTUCKY.

ALLEN, JOHN R., . . . . .	Lexington.
ALLEN, LAFON, . . . . .	Louisville.
BARRET, ALEXANDER G., . . . . .	Louisville.

## KENTUCKY.—Continued.

BASKIN, JOHN B., . . . . .	Louisville.
BRANDEIS, ALBERT S., . . . . .	Louisville.
BRUCE, HELM, . . . . .	Louisville.
BULLITT, THOMAS W., . . . . .	Louisville.
BULLITT, WILLIAM MARSHALL, . . . . .	Louisville.
BURNETT, HENRY, . . . . .	Louisville.
COX, ATTILLA, JR., . . . . .	Louisville.
DOOLAN, JOHN C., . . . . .	Louisville.
ELLIS, W. T., . . . . .	Owensboro.
FAIRLEIGH, JAMES FRANKLIN, . . . . .	Louisville.
FLEXNER, BERNARD, . . . . .	Louisville.
GILBERT, GEORGE G., . . . . .	Shelbyville.
GRUBBS, CHARLES S., . . . . .	Louisville.
HALL, WALKER C., . . . . .	Covington.
HARRIS, W. O., . . . . .	Louisville.
HELM, JAMES P., . . . . .	Louisville.
HUGHES, D. H., . . . . .	Paducah.
KOHN, AARON, . . . . .	Louisville.
MACKOY, WILLIAM H. (Cincinnati, O.), . . . . .	Covington.
MACPHERSON, ERNEST, . . . . .	Louisville.
MORTON, J. R., . . . . .	Lexington.
MCDERMOTT, EDWARD J., . . . . .	Louisville.
PIETLE, JAMES S., . . . . .	Louisville.
RAY, CHARLES T., . . . . .	Louisville.
REED, WILLIAM M., . . . . .	Paducah.
SHERLEY, SWAGAR, . . . . .	Louisville.
STONE, HENRY L., . . . . .	Louisville.
SUMRALL, W. LAWSON, . . . . .	Harrodsburg.
THORNTON, ROBERT A., . . . . .	Lexington.
THUM, WILLIAM WARWICK, . . . . .	Louisville.
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TRABUE, EDMUND F., . . . . .	Louisville.
WATTS, WILLIAM W., . . . . .	Louisville.

## LOUISIANA.

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BENEDICT, WILLIAM S., . . . . .	New Orleans.
BRICE, ALBERT G., . . . . .	New Orleans.
CAFFERY, DONELSON, . . . . .	Franklin.
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CLEGG, JOHN, . . . . .	New Orleans.
DART, HENRY P., . . . . .	New Orleans.

## LOUISIANA.—Continued.

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DENÉGRE, WALTER D., . . . . .	New Orleans.
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FORMAN, BENJAMIN RICE, . . . . .	New Orleans.
HALL, HARRY H., . . . . .	New Orleans.
HART, W. O., . . . . .	New Orleans.
HOWE, WILLIAM WIRT, . . . . .	New Orleans.
HUNT, CARLETON, . . . . .	New Orleans.
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MERRICK, EDWIN T., . . . . .	New Orleans.
McCLOSKEY, BERNARD, . . . . .	New Orleans.
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ROUSE, JOHN D., . . . . .	New Orleans.
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THORNTON, J. R., . . . . .	Alexandria.
WENCK, E. J., . . . . .	New Orleans.

## MAINE.

APPLETON, FREDERICK H., . . . . .	Bangor.
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COOK, CHARLES SUMNER, . . . . .	Portland.
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HALE, CLARENCE, . . . . .	Portland.
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HAMLIN, HANNIBAL E., . . . . .	Ellsworth.
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MADIGAN, JOHN B., . . . . .	Houlton.
POWERS, FREDERICK A., . . . . .	Houlton.
SKELTON, WILLIAM B., . . . . .	Lewiston.
SNOW, DAVID W., . . . . .	Portland.
STROUT, SEWALL C., . . . . .	Portland.
SYMONDS, JOSEPH W., . . . . .	Portland.
WILSON, F. A., . . . . .	Bangor.
WISWELL, ANDREW P., . . . . .	Ellsworth.
WOODARD, CHARLES F., . . . . .	Bangor.
WOODMAN, EDWARD, . . . . .	Portland.

## MARYLAND.

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BERNARD, RICHARD, . . . . .	Baltimore.
BONAPARTE, CHARLES J., . . . . .	Baltimore.
BRANTLY, WILLIAM T., . . . . .	Baltimore.
BRISCOE, JOHN P., . . . . .	Prince Frederick.
BROWN, STEWART, . . . . .	Baltimore.
BUCKLER, WILLIAM H., . . . . .	Baltimore.
CAREY, FRANCIS K., . . . . .	Baltimore.
COLTON, WILLIAM, . . . . .	Baltimore.
CROSS, E. J. D., . . . . .	Baltimore.
DAWKINS, WALTER I., . . . . .	Baltimore.
DAWSON, WILLIAM H., . . . . .	Baltimore.
DENNIS, JAMES U., . . . . .	Baltimore.
DEVECMON, WILLIAM C., . . . . .	Cumberland.
DONNELLY, EDWARD A., . . . . .	Baltimore.
DOUB, ALBERT A., . . . . .	Cumberland.
FINK, CHARLES E., . . . . .	Westminster.
GAITHER, GEORGE R., JR., . . . . .	Baltimore.
GANS, EDGAR H., . . . . .	Baltimore.
GREGG, MAURICE, . . . . .	Baltimore.
HARLAN, HENRY D., . . . . .	Baltimore.
HARLEY, CHARLES F., . . . . .	Baltimore.
HAYES, THOMAS G., . . . . .	Baltimore.
HENDERSON, ROBERT R., . . . . .	Cumberland.
HEUISLER, CHARLES W., . . . . .	Baltimore.
HINKLEY, JOHN, . . . . .	Baltimore.
HISKY, THOMAS FOLEY, . . . . .	Baltimore.
HOULTON, SAMUEL C., . . . . .	Baltimore.
HOWARD, CHARLES MORRIS, . . . . .	Baltimore.
HUGHES, THOMAS, . . . . .	Baltimore.
KNOTT, A. LEO, . . . . .	Baltimore.
LEAKIN, J. WILSON, . . . . .	Baltimore.
LEE, BLAIR (Washington, D. C.), . . . . .	Silver Springs.
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MILES, JOSHUA W., . . . . .	Princess Anne.
MORRIS, THOMAS J., . . . . .	Baltimore.
MULLIN, MICHAEL A., . . . . .	Baltimore.
MCCOMAS, LOUIS E., . . . . .	Williamsport.
NILES, ALFRED S., . . . . .	Baltimore.
PAGE, HENRY, . . . . .	Princess Anne.
PERKINS, WILLIAM H., . . . . .	Baltimore.

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POE, JOHN PRENTISS, . . . . .	Baltimore.
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RICHMOND, BENJAMIN A., . . . . .	Cumberland.
ROBINSON, RALPH, . . . . .	Baltimore.
ROBINSON, THOMAS H., . . . . .	Bel Air.
ROGERS, ROBERT LYON, . . . . .	Baltimore.
SAMS, CONWAY W., . . . . .	Baltimore.
SCHMUCKER, SAMUEL D., . . . . .	Baltimore.
SHARP, GEORGE M., . . . . .	Baltimore.
SLOAN, D. LINDLEY, . . . . .	Cumberland.
STEUART, ARTHUR, . . . . .	Baltimore.
STOCKBRIDGE, HENRY, . . . . .	Baltimore.
THOMAS, WILLIAM S., . . . . .	Baltimore.
TUCK, PHILEMON H., . . . . .	Baltimore.
VENABLE, RICHARD M., . . . . .	Baltimore.
WALSH, WILLIAM E., . . . . .	Cumberland.
WALTER, M. R., . . . . .	Baltimore.
WARFIELD, EDWIN, . . . . .	Baltimore.
WATERS, J. S. T., . . . . .	Baltimore.
WHITELOCK, GEORGE, . . . . .	Baltimore.
WILLIAMS, FERDINAND, . . . . .	Cumberland.
WILLIAMS, HENRY W., . . . . .	Baltimore.
WILLIAMS, STEVENSON A., . . . . .	Bel Air.
WILMER, L. ALLISON, . . . . .	La Plata.

## MASSACHUSETTS.

ADAMS, WALTER, . . . . .	So. Framingham.
ALLEN, FRANK D., . . . . .	Boston.
AMES, JAMES BARR, . . . . .	Cambridge.
ANDERSON, GEORGE W., . . . . .	Boston.
APPLETON, JOHN H., . . . . .	Boston.
BAILEY, HOLLIS R., . . . . .	Boston.
BARNES, CHARLES B., JR., . . . . .	Boston.
BEALE, JOSEPH HENBY, JR., . . . . .	Cambridge.
BELL, CHARLES U., . . . . .	Andover.
BENNETT, SAMUEL C., . . . . .	Boston.
BIGELOW, MELVILLE M., . . . . .	Boston.
BRANDEIS, LOUIS D., . . . . .	Boston.
BRANNAN, J. DODDRIDGE, . . . . .	Cambridge.
BULLOCK, A. G., . . . . .	Worcester.
BUMPUS, EVERETT C., . . . . .	Boston.
CARVER, EUGENE P., . . . . .	Boston.



## MASSACHUSETTS.—Continued.

CHAMPLIN, EDGAR R., . . . . .	Boston.
CHANDLER, ALFRED D., . . . . .	Boston.
CLAPP, ROBERT P., . . . . .	Lexington.
CLARK, I. R., . . . . .	Boston.
CLIFFORD, CHARLES W., . . . . .	New Bedford.
COOLIDGE, WILLIAM H., . . . . .	Boston.
COPELAND, ALFRED M., . . . . .	Springfield.
COTTER, JAMES E., . . . . .	Boston.
CRAPO, WILLIAM W., . . . . .	New Bedford.
CROCKER, GEORGE G., . . . . .	Boston.
CROSBY, JOHN C., . . . . .	Pittsfield.
CUNNINGHAM, FREDERIC, . . . . .	Boston.
DABNEY, L. S., . . . . .	Boston.
DAVIS, SIMON, . . . . .	Boston.
DEWEY, HENRY S., . . . . .	Boston.
DICKINSON, M. F., . . . . .	Boston.
DILLAWAY, W. E. L., . . . . .	Boston.
DODGE, FREDERIC, . . . . .	Boston.
FALL, GEORGE HOWARD, . . . . .	Malden.
FISH, FREDERICK P., . . . . .	Boston.
FOSTER, ALFRED D., . . . . .	Boston.
FOSTER, REGINALD, . . . . .	Boston.
FOX, JABEZ, . . . . .	Boston.
FRENCH, ARTHUR P., . . . . .	Boston.
FRENCH, ASA P., . . . . .	Boston.
FRENCH, WILLIAM B., . . . . .	Boston.
FRIEDMAN, LEE M., . . . . .	Boston.
GALLAGHER, CHARLES T., . . . . .	Boston.
GARDNER, CHARLES L., . . . . .	Springfield.
GARGAN, THOMAS J., . . . . .	Boston.
GIDDINGS, CHARLES, . . . . .	Great Barrington.
GOODWIN, FRANK, . . . . .	Boston.
GRAY, JOHN C., . . . . .	Boston.
GRAY, J. CONVERSE, . . . . .	Boston.
GREENE, FREDERICK I., . . . . .	Greenfield.
HALL, BORDMAN, . . . . .	Boston.
HAMLIN, CHARLES S., . . . . .	Boston.
HAMMOND, JOHN C., . . . . .	Northampton.
HEMENWAY, ALFRED, . . . . .	Boston.
HOWE, ELMER P., . . . . .	Boston.
HURLBUTT, HENRY F., . . . . .	Boston.
JENNINGS, ANDREW J., . . . . .	Fall River.
JOHNSON, BENJAMIN N., . . . . .	Boston.
JONES, LEONARD A., . . . . .	Boston.

## MASSACHUSETTS.—Continued.

JOSLIN, JAMES T., . . . . .	Hudson.
KEITH, IRA B., . . . . .	Lynn.
KELLEN, WILLIAM V., . . . . .	Boston.
KING, HENRY W. (New York, N. Y.), . . . . .	Worcester.
LADD, BABSON S., . . . . .	Boston.
LADD, NATHANIEL W., . . . . .	Boston.
LAMB, SAMUEL O., . . . . .	Greenfield.
LINCOLN, SOLOMON, . . . . .	Boston.
LOWELL, JOHN, . . . . .	Boston.
LYONS, MARTIN, . . . . .	Marshall.
MALONE, DANA, . . . . .	Greenfield.
MOODY, WILLIAM H. (Washington, D. C.), . . . . .	Haverhill.
MORSE, GEORGE W., . . . . .	Boston.
MORSE, GODFREY, . . . . .	Boston.
MORSE, ROBERT M., . . . . .	Boston.
MORTON, MARCUS, . . . . .	Boston.
MOULTON, HENRY P., . . . . .	Salem.
MUNROE, WILLIAM A., . . . . .	Boston.
MYERS, JAMES J., . . . . .	Boston.
MCCLENCH, WILLIAM W., . . . . .	Springfield.
McEVOY, JOHN W., . . . . .	Lowell.
NILES, WILLIAM H., . . . . .	Lynn.
NUTTER, GEORGE R., . . . . .	Boston.
OLNEY, RICHARD, . . . . .	Boston.
PARKER, HERBERT, . . . . .	Worcester.
PAYSON, EDWARD P., . . . . .	Boston.
PEARL, FRANCIS H., . . . . .	Haverhill.
PICKMAN, JOHN J., . . . . .	Lowell.
PIERCE, EDWARD P., . . . . .	Fitchburg.
PINKERTON, ALFRED S., . . . . .	Worcester.
PROCTOR, THOMAS W., . . . . .	Boston.
PUTNAM, WILLIAM L., . . . . .	Boston.
RANNEY, FLETCHER, . . . . .	Boston.
RICHARDSON, GEORGE F., . . . . .	Lowell.
RICHARDSON, W. K., . . . . .	Boston.
ROBERTS, GEORGE L., . . . . .	Boston.
RUGG, ARTHUR P., . . . . .	Worcester.
SAWYER, ALFRED P., . . . . .	Lowell.
SAXE, JOHN W., . . . . .	Boston.
SCAIFE, LAURISTON L., . . . . .	Boston.
SCHOFIELD, WILLIAM, . . . . .	Boston.
SCHOULER, JAMES, . . . . .	Boston.
SEARS, RUSSELL A., . . . . .	Boston.
SHEPARD, HARVEY N., . . . . .	Boston.

## MASSACHUSETTS.—Continued.

SLOCUM, EDWARD T., . . . . .	Pittsfield.
SLOCUM, WINFIELD S., . . . . .	Boston.
SMITH, FRANK BULKELEY, . . . . .	Worcester.
SMITH, HENRY HYDE, . . . . .	Boston.
SMITH, JEREMIAH, . . . . .	Cambridge.
SPRING, ARTHUR L., . . . . .	Boston.
STIMSON, FREDERIC J., . . . . .	Boston.
STONE, FREDERICK M., . . . . .	Boston.
STOREY, MOORFIELD, . . . . .	Boston.
STORROW, JAMES J., . . . . .	Boston.
SWAN, CHARLES H., . . . . .	Boston.
SWAN, WILLIAM W., . . . . .	Boston.
SWASEY, GEORGE R., . . . . .	Boston.
TAFT, GEORGE S., . . . . .	Worcester.
TUCKER, GEORGE F., . . . . .	Boston.
TYLER, CHARLES H., . . . . .	Boston.
WAMBAUGH, EUGENE, . . . . .	Cambridge.
WARNER, JOSEPH B., . . . . .	Boston.
WARREN, SAMUEL D., . . . . .	Boston.
WELLMAN, ARTHUR H., . . . . .	Boston.
WESTON-SMITH, R. D., . . . . .	Boston.
WHIPPLE, SHERMAN L., . . . . .	Boston.
WHITE, LUTHER, . . . . .	Chicopee.
WILLIAMS, DAVID W., . . . . .	Boston.
WILLISTON, SAMUEL, . . . . .	Belmont.
WYMAN, HENRY A., . . . . .	Boston.

## MICHIGAN.

BALL, DAN H., . . . . .	Marquette.
BARNETT, JAMES F., . . . . .	Grand Rapids.
BATES, GEORGE W., . . . . .	Detroit.
BEAUMONT, JOHN W., . . . . .	Detroit.
BISSELL, JOHN H., . . . . .	Detroit.
BOUDEMAN, DALLAS, . . . . .	Kalamazoo.
BREWSTER, JAMES H., . . . . .	Ann Arbor.
BUNDY, McGEORGE, . . . . .	Grand Rapids.
CAMPBELL, CHARLES H., . . . . .	Detroit.
CAMPBELL, HENRY M., . . . . .	Detroit.
CHADBOURNE, THOMAS L., . . . . .	Houghton.
DENISON, ARTHUR C., . . . . .	Grand Rapids.
DICKINSON, DON M., . . . . .	Detroit.
DRIGGS, FREDERICK E., . . . . .	Detroit.
DUFFIELD, HENRY M., . . . . .	Detroit.
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HUTCHINS, HARRY B., . . . . .	Ann Arbor.
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JANUARY, WILLIAM L., . . . . .	Detroit.
KEENEY, WILLARD F., . . . . .	Grand Rapids.
KELLY, RONALD, . . . . .	Detroit.
KENT, CHARLES A., . . . . .	Detroit.
KINGSLEY, WILLARD, . . . . .	Grand Rapids.
KINNE, EDWARD D., . . . . .	Ann Arbor.
KNAPPEN, LOYAL E., . . . . .	Grand Rapids.
LIGHTNER, CLARENCE A., . . . . .	Detroit.
LILLIBRIDGE, WILLARD M., . . . . .	Detroit.
MOORE, JOSEPH B., . . . . .	Lansing.
MOORE, WILLIAM A., . . . . .	Detroit.
MCGARRY, THOMAS F., . . . . .	Grand Rapids.
NORRIS, MARK, . . . . .	Grand Rapids.
O'BRIEN, THOMAS J., . . . . .	Grand Rapids.
OSTRANDER, RUSSELL C., . . . . .	Lansing.
PARKHURST, JOHN G., . . . . .	Coldwater.
PATTERSON, JOHN C., . . . . .	Marshall.
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POND, ASHLEY, . . . . .	Detroit.
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RUSSELL, ALFRED, . . . . .	Detroit.
RUSSELL, HENRY, . . . . .	Detroit.
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SMITH, WILLIAM ALDEN, . . . . .	Grand Rapids.
STEVENS, FREDERICK W., . . . . .	Detroit.
STONE, JOHN W., . . . . .	Marquette.
SWIFT, CHARLES M., . . . . .	Detroit.
TAGGART, EDWARD, . . . . .	Grand Rapids.
WANTY, GEORGE P., . . . . .	Grand Rapids.
WEADOCK, THOMAS A. E., . . . . .	Detroit.
WEAVER, CLEMENT E., . . . . .	Adrian.
WHITE, PETER, . . . . .	Marquette.
WHITTEMORE, JAMES, . . . . .	Detroit.
WILGUS, HORACE L., . . . . .	Ann Arbor.
WILSON, CHARLES M., . . . . .	Grand Rapids.
WOLF, GUSTAVE A., . . . . .	Grand Rapids.

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ALBERT, CHARLES S., . . . . .	Minneapolis.
BEGG, WILLIAM R., . . . . .	St. Paul.
BOUTTELLE, M. H., . . . . .	Minneapolis.
BROWN, FREDERICK V., . . . . .	Minneapolis.
BROWN, ROME G., . . . . .	Minneapolis.
CHRISMAN, CHARLES E., . . . . .	Ortonville.
COHEN, EMANUEL, . . . . .	Minneapolis.
ELLIOTT, CHARLES B., . . . . .	Minneapolis.
FISH, DANIEL, . . . . .	Minneapolis.
HALL, ALBERT H., . . . . .	Minneapolis.
KELLOGG, FRANK B., . . . . .	St. Paul.
KERR, WILLIAM A., . . . . .	Minneapolis.
LANCASTER, WILLIAM A., . . . . .	Minneapolis.
MASON, ALFRED F., . . . . .	St. Paul.
MERCER, HUGH V., . . . . .	Minneapolis.
PAIGE, JAMES, . . . . .	Minneapolis.
PAUL, A. C., . . . . .	Minneapolis.
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SHEABER, JAMES D., . . . . .	Minneapolis.
STRINGER, EDWARD C., . . . . .	St. Paul.
TIGHE, AMBROSE, . . . . .	St. Paul.
WASHBURN, JED L., . . . . .	Duluth.
WEBBER, MARSHALL B., . . . . .	Winona.
WHELAN, RALPH, . . . . .	Minneapolis.
YOUNG, GEORGE B., . . . . .	St. Paul.

## MISSISSIPPI.

BOWERS, E. J., . . . . .	Bay St. Louis.
HOWRY, CHARLES B. (Washington, D. C.), . . .	Oxford.
MONTGOMERY, M. A., . . . . .	Oxford.
ROSE, A. J., . . . . .	Greenville.
SOMERVILLE, THOMAS H., . . . . .	University.
THOMPSON, R. H., . . . . .	Jackson.

## MISSOURI.

ABBOTT, A. L., . . . . .	St. Louis.
ALLEN, CLARLES CLAFLIN, . . . . .	St. Louis.
ASHLEY, HENRY DE L., . . . . .	Kansas City.
BABBITT, BYRON T., . . . . .	St. Louis.
BAKEWELL, PAUL, . . . . .	St. Louis.
BALL, R. E., . . . . .	Kansas City.
BARCLAY, SHEPARD, . . . . .	St. Louis.
BATES, CHARLES W., . . . . .	St. Louis.

## MISSOURI.—Continued.

BLAIR, ALBERT, . . . . .	St. Louis.
BLEVINS, JOHN A., . . . . .	St. Louis.
BOYLE, WILBUR F., . . . . .	St. Louis.
BRUMBACK, JEFFERSON, . . . . .	Kansas City.
BRYAN, P. TAYLOR, . . . . .	St. Louis.
BRYSON, JOSEPH M., . . . . .	St. Louis.
CARR, JAMES A., . . . . .	St. Louis.
CHANDLER, JEFFERSON, . . . . .	St. Louis.
CHARLES, BENJAMIN H., . . . . .	St. Louis.
CHRISTIE, HARVEY L., . . . . .	St. Louis.
CLARKE, ENOS, . . . . .	St. Louis.
COCHRAN, ALEXANDER G., . . . . .	St. Louis.
COLLINS, CHARLES CUMMINGS, . . . . .	St. Louis.
CUNNINGHAM, EDWARD, JR., . . . . .	St. Louis.
CURTIS, WILLIAM S., . . . . .	St. Louis.
DONALDSON, WILLIAM R., . . . . .	St. Louis.
DONALDSON, WILLIAM R., JR., . . . . .	St. Louis.
DOUGLAS, WALTER B., . . . . .	St. Louis.
DYER, DAVID P., . . . . .	St. Louis.
EARLY, MARION C., . . . . .	St. Louis.
ELIOT, EDWARD C., . . . . .	St. Louis.
FERRIS, FRANKLIN, . . . . .	St. Louis.
FINKELNBURG, G. A., . . . . .	St. Louis.
FISHER, D. D., . . . . .	St. Louis.
FISSE, WILLIAM E., . . . . .	St. Louis.
FLITCRAFT, PEMBROOK R., . . . . .	St. Louis.
FOSTER, ROBERT M., . . . . .	St. Louis.
FOWLER, A. C., . . . . .	St. Louis.
GANTT, JAMES B., . . . . .	Jefferson City.
GARVIN, WILLIAM EVERETT, . . . . .	St. Louis.
GATES, EDWARD P., . . . . .	Kansas City.
GENTRY, NORTH F., . . . . .	Columbia.
GRANT, LEE W., . . . . .	St. Louis.
GROSSMAN, EMANUEL M., . . . . .	St. Louis.
HAFF, DELBERT J., . . . . .	Kansas City.
HAGERMAN, FRANK, . . . . .	Kansas City.
HAGERMAN, JAMES, . . . . .	St. Louis.
HAGERMAN, JAMES, JR., . . . . .	St. Louis.
HARKLESS, JAMES H., . . . . .	Kansas City.
HIGDON, JOHN C., . . . . .	St. Louis.
HINTON, EDWARD W., . . . . .	Columbia.
HOPKINS, JAMES L., . . . . .	St. Louis.
HOUGH, WARWICK M., . . . . .	St. Louis.
HOUTS, CHARLES A., . . . . .	St. Louis.

## MISSOURI.—Continued.

JACKSON, GEORGE P. B., . . . . .	St. Louis.
JOHNSON, GEORGE S., . . . . .	St. Louis.
JUDSON, FREDERICK N., . . . . .	St. Louis.
KARNES, J. V. C., . . . . .	Kansas City.
KEHR, EDWARD C., . . . . .	St. Louis.
KEYSOR, WILLIAM W. (Kirkwood, Mo ), . . . . .	St. Louis.
KLEIN, JACOB, . . . . .	St. Louis.
LADD, SANFORD B., . . . . .	Kansas City.
LATHROP, GARDINER, . . . . .	Kansas City.
LAWSON, JOHN D., . . . . .	Columbia.
LEHMANN, FRED. W., . . . . .	St. Louis.
LIONBERGER, ISAAC H., . . . . .	St. Louis.
LITTLEFIELD, WALTER, . . . . .	Kansas City.
LYON, MONTAGUE, . . . . .	St. Louis.
MAHAN, GEORGE A., . . . . .	Hannibal.
MAJOR, SAMUEL C., . . . . .	Fayette.
MARLATT, HERBERT R., . . . . .	St. Louis.
MCKEIGHAN, JOHN E., . . . . .	St. Louis.
MCLEOD, W. D., . . . . .	Kansas City.
NAGEL, CHARLES, . . . . .	St. Louis.
NEW, ALEXANDER, . . . . .	Kansas City.
NOBLE, JOHN W., . . . . .	St. Louis.
ORRICK, ALLEN C., . . . . .	St. Louis.
OTTOFY, L. FRANK, . . . . .	St. Louis.
PALMER, CLARENCE S., . . . . .	Kansas City.
PERRY, WILLIAM C., . . . . .	Kansas City.
PHILIPS, JOHN F., . . . . .	Kansas City.
PORTER, VALENTINE MOTT, . . . . .	St. Louis.
PRATT, WALLACE, . . . . .	Kansas City.
REYBURN, VALLE, . . . . .	St. Louis.
REYNOLDS, MATTHEW G., . . . . .	St. Louis.
REYNOLDS, THOMAS H., . . . . .	Kansas City.
ROBERT, EDWARD S., . . . . .	St. Louis.
ROBERTS, V. H., . . . . .	Columbia.
ROBERTSON, GEORGE, . . . . .	Mexico.
ROBINSON, WALTOUR M., . . . . .	Jefferson City.
SCHOFIELD, F. L., . . . . .	Hannibal.
SEBREE, FRANK P., . . . . .	Kansas City.
SEBREE, GEORGE M., . . . . .	Springfield.
SHERWOOD, ADIEL, . . . . .	St. Louis.
SHERWOOD, THOMAS A., . . . . .	Springfield.
SKINKER, THOMAS KEATH, . . . . .	St. Louis.
SMITH, LUTHER ELY, . . . . .	St. Louis.
SPENCER, R. P., . . . . .	St. Louis.

## MISSOURI.—Continued.

SPENCER, SELDEN P.,	St. Louis.
SWARTS, SOLOMON L.,	St. Louis.
TAUSSIG, JAMES,	St. Louis.
TAYLOR, SENECA N.,	St. Louis.
THAYER, AMOS M.,	St. Louis.
THOMPSON, WILLIAM B.,	St. Louis.
TICHENOR, CHARLES O.,	Kansas City.
TITUS, FRANK,	Kansas City.
TRIMBLE, J. McD.,	Kansas City.
WALKER, ROBERT F.,	St. Louis.
WARD, HUGH C.,	Kansas City.
WHELESS, JOSEPH,	St. Louis.
WILFLEY, LEBBEUS R.,	St. Louis.
WILLIAMS, JAMES C.,	Kansas City.
WISLIZENUS, FRED.,	St. Louis.
WITHROW, JAMES E.,	St. Louis.
WOOD, HORATIO D.,	St. Louis.

## MONTANA.

DIXON, WILLIAM W.,	Butte.
SANDERS, JAMES U.,	Helena.
SANDERS, WILBUR F.,	Helena.
SCALLON, WILLIAM,	Butte.
SMITH, D. F.,	Kalispell.

## NEBRASKA.

AMES, JOHN H.,	Lincoln.
BALDRIDGE, HOWARD H.,	Omaha.
BARTLETT, EDMUND M.,	Omaha.
BAXTER, IRVING F.,	Omaha.
BLACKBURN, THOMAS W.,	Omaha.
BRECKENRIDGE, RALPH W.,	Omaha.
BREEN, JOHN P.,	Omaha.
BROGAN, FRANCIS A.,	Omaha.
COWIN, J. C.,	Omaha.
DEWEESE, J. W.,	Lincoln.
DRYDEN, JOHN N.,	Kearney.
DUNDEY, CHARLES L.,	Omaha.
ELGUTTER, CHARLES S.,	Omaha.
GEISTHARDT, STEPHEN L.,	Lincoln.
GREENE, CHARLES J.,	Omaha.
GREENE, ROBERT J.,	Lincoln.
HAINER, EUGENE J.,	Aurora.



## NEBRASKA.—Continued.

HALL, MATTHEW A.,	Omaha.
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HASTINGS, W. G.,	Wilbur.
KINKAID, M. P.,	O'Neill.
KINSLER, JAMES C.,	Omaha.
KRETSINGER, E. O.,	Beatrice.
LANGDON, MARTIN,	Omaha.
LETTON, CHARLES B.,	Fairbury.
MAHONEY, TIMOTHY J.,	Omaha.
MANDERSON, CHARLES F.,	Omaha.
MARTIN, FRANCIS,	Falls City.
MONTGOMERY, CARROLL S.,	Omaha.
MUNGER, W. H.,	Omaha.
MCCANDLESS, A. D.,	Wymore.
McHUGH, WILLIAM D.,	Omaha.
OLDHAM, WILLIS D.,	Kearney.
O'NEILL, HARRY E.,	Omaha.
PATRICK, WILLIAM R.,	Papillion.
POUND, ROSCOE,	Lincoln.
PROUT, F. N.,	Lincoln.
RAIN, FRANK L.,	Fairbury.
REAVIS, C. F.,	Falls City.
REESE, MANOAH B.,	Lincoln.
ROBBINS, C. A.,	Lincoln.
SEDGWICK, S. H.,	York.
SHEEAN, JAMES B.,	Omaha.
SMITH, HOWARD B.,	Omaha.
SMYTH, CONSTANTINE J.,	Omaha.
WAKELEY, ELEAZER,	Omaha.
WEST, JOEL W.,	Omaha.
WHITE, BENJAMIN T.,	Omaha.
WILSON, HENRY H.,	Lincoln.
WOODS, FRANK H.,	Lincoln.
WOOLLEY, JAMES H.,	Grand Island.
WOOLWORTH, JAMES M.,	Omaha.

## NEVADA.

HUFFAKER, FRANCIS M.,	Virginia City.
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## NEW HAMPSHIRE.

ALBIN, JOHN H.,	Concord.
BATCHELLOR, ALBERT S.,	Littleton.
BRANCH, OLIVER E.,	Manchester.

## NEW HAMPSHIRE.—Continued.

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BURNHAM, HENRY E., . . . . .	Manchester.
BURNS, CHARLES H., . . . . .	Nashua.
CHASE, IRA A., . . . . .	Bristol.
COLBY, JAMES F., . . . . .	Hanover.
CROSS, DAVID, . . . . .	Manchester.
EASTMAN, SAMUEL C., . . . . .	Concord.
FELLOWS, JOSEPH W., . . . . .	Manchester.
FRINK, J. S. H., . . . . .	Portsmouth.
STREETER, FRANK S., . . . . .	Concord.

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BERGEN, JAMES J., . . . . .	Somerville.
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BUCHANAN, JAMES, . . . . .	Trenton.
CLEVINGER, WILLIAM M., . . . . .	Atlantic City.
COLE, CLARENCE L., . . . . .	Atlantic City.
COLEY, EDWARD M., . . . . .	Newark.
DICKINSON, S. MEREDITH, . . . . .	Trenton.
DUNN, MICHAEL, . . . . .	Paterson.
ELY, JOHN J., . . . . .	Freehold.
EMERY, JOHN R., . . . . .	Newark.
FORT, J. FRANKLIN, . . . . .	Newark.
GARFIELD, HARRY A., . . . . .	Princeton.
GARRETSON, A. Q., . . . . .	Morristown.
GOBLE, L. SPENCER (New York, N. Y.), . . . . .	Newark.
GODFREY, BURROWS C., . . . . .	Atlantic City.
GOODELL, EDWIN B., . . . . .	Montclair.
GRANT, ALEXANDER, JR., . . . . .	Newark.
GRIGGS, JOHN W. (New York, N. Y.), . . . . .	Paterson.
HAMILL, HUGH H., . . . . .	Trenton.
HARDIN, JOHN R., . . . . .	Newark.
HARTSHORNE, CHARLES H., . . . . .	Jersey City.
HUTCHINSON, BARTON B., . . . . .	Trenton.
KEASBEY, EDWARD Q., . . . . .	Newark.
LANNING, WILLIAM M., . . . . .	Trenton.
LYON, ADRIAN, . . . . .	Perth Amboy.
MCCARTER, ROBERT H., . . . . .	Newark.
PARKER, CHARLES W., . . . . .	Jersey City.
PARKER, CHAUNCEY G., . . . . .	Newark.
PARKER, CORTLANDT, . . . . .	Newark.
PARKER, CORTLANDT, JR., . . . . .	Newark.

## NEW JERSEY.—Continued.

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RANDOLPH, CARMAN F. (New York, N. Y.), . .	Morristown.
RIKER, ADRIAN, . . . . .	Newark.
SHIPMAN, GEORGE M., . . . . .	Belvidere.
STRONG, ALAN H., . . . . .	New Brunswick.
SWAYZE, FRANCIS J., . . . . .	Newark.
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THOMPSON, JOSEPH, . . . . .	Atlantic City.
VROOM, GARRET D. W., . . . . .	Trenton.
WILSON, WOODROW, . . . . .	Princeton.
WOODRUFF, ROBERT S., . . . . .	Trenton.

## NEW MEXICO TERRITORY.

CATRON, THOMAS B., . . . . .	Santa Fé.
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## NEW YORK.

ABBOT, EVERETT V., . . . . .	New York.
ADAMS, ELBRIDGE L., . . . . .	Rochester.
ALLEN, FREDERICK I., . . . . .	Auburn.
ANDREWS, JAMES D., . . . . .	New York.
ASHLEY, CLARENCE D., . . . . .	New York.
AUB, THEODORE, . . . . .	New York.
BACON, SELDEN, . . . . .	New York.
BARBER, ARTHUR WILLIAM, . . . . .	New York.
BARTLETT, JOHN P., . . . . .	New York.
BECK, JAMES M., . . . . .	New York.
BELL, CLARK, . . . . .	New York.
BENEDICT, ABRAHAM, . . . . .	New York.
BENEDICT, ROBERT D., . . . . .	New York.
BIJUR, NATHAN, . . . . .	New York.
BINNEY, HAROLD, . . . . .	New York.
BISCHOFF, HENRY, JR., . . . . .	New York.
BOOTHBY, JOHN WILLIAM, . . . . .	New York.
BROWN, ADDISON, . . . . .	New York.
BROWN, WILLIAM G., . . . . .	New York.
BRUNO, RICHARD M., . . . . .	New York.
BUCHANAN, CHARLES J., . . . . .	Albany.
BURDICK, FRANCIS M., . . . . .	New York.
BURR, CHARLES L., . . . . .	New York.
BUTLER, CHARLES HENRY (Washington, D. C.), .	New York.
BUTLER, WILLIAM ALLEN, JR., . . . . .	New York.
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BUTTON, WILLIAM H., . . . . .	New York.

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CARPENTER, JAMES E., . . . . .	New York.
CARTER, JAMES C., . . . . .	New York.
CHASE, GEORGE, . . . . .	New York.
CHOATE, JOSEPH H. (London, England), . . . . .	New York.
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COLLIER, M. DWIGHT, . . . . .	New York.
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GOODELLE, WILLIAM P., . . . . .	Syracuse.
GREELEY, WILLIAM B., . . . . .	New York.
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HAWKESWORTH, R. W., . . . . .	New York.
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HUBBARD, THOMAS H., . . . . .	New York.
HUFFCUT, E. W., . . . . .	Ithaca.
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IRVINE, FRANK, . . . . .	Ithaca.
JACKSON, WILLIAM H., . . . . .	New York.
JACOB, EPHRAIM A., . . . . .	New York.
JELLINEK, EDWARD L., . . . . .	Buffalo.
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KEENER, WILLIAM A., . . . . .	New York.
KELLOGG, E. BARSTOW, . . . . .	New York.
KELLOGG, L. LAFLIN, . . . . .	New York.
KENYON, WILLIAM H., . . . . .	New York.
KERR, THOMAS B., . . . . .	New York.
KIDDLE, ALFRED W., . . . . .	New York.
KILVERT, THOMAS, . . . . .	New York.
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KIRLIN, J. PARKER, . . . . .	New York.
KLOCK, GEORGE S., . . . . .	Utica.
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LEVIS, HOWARD C. (London, England), . . . . .	Schenectady.
LEVY, JOSEPH L., . . . . .	New York.
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LITTLETON, MARTIN W., . . . . .	Brooklyn.
LOGAN, WALTER S., . . . . .	New York.
MACFARLAND, W. W., . . . . .	New York.
MERCHANT, HENRY D., . . . . .	New York.
MEYERS, SIDNEY S., . . . . .	New York.
MILBURN, JOHN G., . . . . .	New York.
MILLER, WILLIAM W., . . . . .	New York.
MILNOR, M. CLEILAND, . . . . .	New York.
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MOSES, RAPHAEL J., . . . . .	New York.
MYERS, NATHANIEL, . . . . .	New York.
MCCALL, EDWARD E., . . . . .	New York.
MCCOOK, JOHN J., . . . . .	New York.
MCCRARY, A. J., . . . . .	Binghamton.
MCINTOSH, JAMES H., . . . . .	New York.
McKINNEY, WILLIAM M., . . . . .	Northport.
MCLEAN, DONALD, . . . . .	New York.
McNULTY, WILLIAM D. (New York, N. Y.), . . . . .	Saratoga Springs.
NICHOLS, GEORGE L., . . . . .	New York.
NICOLSON, JOHN, JR., . . . . .	New York.
NOBLE, DANIEL, . . . . .	Long Island City.
NOBLE, HERBERT, . . . . .	New York.
OPDYKE, WILLIAM S., . . . . .	New York.
OSGOOD, HOWARD L., . . . . .	Rochester.
PARKER, ALTON B., . . . . .	Kingston.
PARSONS, HINS DILL, . . . . .	Schenectady.
PETTY, ROBERT D., . . . . .	New York.
PIERCE, WINSLOW S., . . . . .	New York.
POTTER, FREDERICK, . . . . .	New York.
PRIME, RALPH E., . . . . .	Yonkers.
PUTNAM, HARRINGTON, . . . . .	New York.
QUACKENBUSH, JAMES L., . . . . .	Buffalo.
REDDING, JOSEPH D., . . . . .	New York.
REDDING, WILLIAM A., . . . . .	New York.
REDFIELD, HENRY S., . . . . .	New York.
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ROOT, ELIHU, . . . . .	New York.

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RUDD, WILLIAM PLATT, . . . . .	Albany.
RUSSELL, ISAAC F., . . . . .	New York.
SCOTT, JAMES L., . . . . .	Saratoga Springs.
SEXTON, PLINY T., . . . . .	Palmyra.
SEYMOUR, HENRY H., . . . . .	Buffalo.
SHACK, FERDINAND, . . . . .	New York.
SMITH, NELSON, . . . . .	New York.
SPEIR, GILBERT M., . . . . .	New York.
STETSON, FRANCIS LYNDE, . . . . .	New York.
STILLMAN, THOMAS E., . . . . .	New York.
SUMERWELL, E. K., . . . . .	New York.
SUMNER, EDWARD A., . . . . .	New York.
SUTRO, THEODORE, . . . . .	New York.
TAGGART, RUSH, . . . . .	New York.
TOMPKINS, HAMILTON B., . . . . .	New York.
TREMAIN, HENRY E., . . . . .	New York.
VANAMEE, WILLIAM, . . . . .	Newburgh.
VAN SLYCK, GEORGE F., . . . . .	New York.
VAN SLYCK, GEORGE W., . . . . .	New York.
VAN VECHTEN, A. V. W., . . . . .	New York.
VIEU, HENRY A., . . . . .	New York.
VILLARD, HAROLD G., . . . . .	New York.
WADHAMS, FREDERICK E., . . . . .	Albany.
WALKER, ALBERT H., . . . . .	New York.
WALSH, ARTHUR R., . . . . .	Albany.
WARD, HAMILTON, . . . . .	Buffalo.
WARD, HENRY GALBRAITH, . . . . .	New York.
WARNER, GEORGE COFFING, . . . . .	New York.
WARNER, JOHN DEWITT, . . . . .	New York.
WEEKS, WILLIAM R., . . . . .	New York.
WETMORE, EDMUND, . . . . .	New York.
WHEELER, EVERETT P., . . . . .	New York.
WHITNEY, EDWARD B., . . . . .	New York.
WHITTAKER, EGBERT, . . . . .	Saugerties.
WILCOX, ANSLEY, . . . . .	Buffalo.
WILLCOX, DAVID, . . . . .	New York.
WING, HENRY T., . . . . .	New York.
WISE, JOHN S., . . . . .	New York.
WOLLMAN, HENRY, . . . . .	New York.
WOODBUFF, EDWIN H., . . . . .	Ithaca.

## NORTH CAROLINA.

ANDREWS, ALEXANDER BOYD, JR., . . . . .	Raleigh.
BIGGS, J. CRAWFORD, . . . . .	Durham.

## NORTH CAROLINA.—Continued.

BRIDGERS, JOHN L.,	Tarboro.
BUSBEE, FABIUS H.,	Raleigh.
CLEMENT, L. H.,	Salisbury.
DOUGLAS, ROBERT M.,	Greensboro.
MANLY, CLEMENT,	Winston-Salem.
MEARES, IREDELLE,	Wilmington.
PATTERSON, LINDSAY,	Winston-Salem.
PRUDEN, WILLIAM D.,	Edenton.
WALKER, PLATT D.,	Charlotte.

## NORTH DAKOTA.

AUSTIN, JAMES M.,	Ellendale.
BOSARD, JAMES H.,	Grand Forks.
BRUCE, ANDREW A.,	Grand Forks.
SPALDING, BURLEIGH FOLSOM,	Fargo.
THOMAS, W. H.,	Leeds.

## OHIO.

ANDERSON, JAMES H.,	Columbus.
BETTMAN, ALFRED,	Cincinnati.
BLACKFORD, AARON,	Findlay.
BURKET, HARLAN F.,	Findlay.
BURKET, JACOB F.,	Findlay.
BUSHNELL, T. H.,	Cleveland.
CALHOUN, PAT.,	Cleveland.
CLARKE, JOHN H.,	Cleveland.
CLEVELAND, HARLAN,	Cincinnati.
COLSTON, EDWARD,	Cincinnati.
COOK, E. S.,	Cleveland.
CUSHING, WILLIAM E.,	Cleveland.
DAY, WILLIAM R. (Washington, D. C.),	Canton.
DEMPSEY, JAMES H.,	Cleveland.
DICKMAN, FRANKLIN J.,	Cleveland.
DOYLE, JOHN H.,	Toledo.
DURBAN, FRANK A.,	Zanesville.
FERGUSON, EDWARD A.,	Cincinnati.
FERRIS, AARON A.,	Cincinnati.
FOLLETT, ALFRED DEWEY,	Marietta.
FOLLETT, MARTIN DEWEY,	Marietta.
FREIBERG, A. JULIUS,	Cincinnati.
FULLER, CLIFFORD W.,	Cleveland.
GEDDES, FREDERICK L.,	Toledo.
GOFF, FREDERICK H.,	Cleveland.



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GOULDER, HARVEY D.,	Cleveland.
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HARMON, JUDSON,	Cincinnati.
HARPER, JACOB CHANDLER,	Cincinnati.
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HENDERSON, JOHN M.,	Cleveland.
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HODLY, GEORGE, JR.,	Cincinnati.
HOGSETT, THOMAS H.,	Cleveland.
HOLLISTER, THOMAS,	Cincinnati.
HOPKINS, EVAN H.,	Cleveland.
HOWLAND, PAUL,	Cleveland.
HOYT, JAMES H.,	Cleveland.
HUNT, CHARLES J.,	Cincinnati.
HUNT, SAMUEL F.,	Cincinnati.
JAMES, FRANCIS B.,	Cincinnati.
JOHNSON, HOMER H.,	Cleveland.
JOHNSON, SIMEON M.,	Cincinnati.
JONES, ASAH EL W.,	Youngstown.
JONES, JAMES M.,	Cleveland.
JONES, RANKIN D.,	Cincinnati.
JOSEPH, EMIL,	Cleveland.
KENNON, NEWELL K.,	St. Clairsville.
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KLINE, VIRGIL P.,	Cleveland.
KNIGHT, WALTER A.,	Cincinnati.
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MATTHEWS, C. BENTLEY,	Cincinnati.
MAXWELL, LAWRENCE, JR.,	Cincinnati.
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REECE, PATTERSON A.,	Cincinnati.
ROBERTSON, C. D.,	Cincinnati.
ROGERS, WILLIAM P.,	Cincinnati.
SALTZGABER, GAYLARD M.,	Van Wert.
SANDERS, W. B.,	Cleveland.
SAYLER, JOHN RYNER,	Cincinnati.
SENEY, HENRY W.,	Toledo.

## OHIO.—Continued.

SMITH, J. H. CHARLES, . . . . .	Cincinnati.
SMITH, RUFUS B., . . . . .	Cincinnati.
SQUIRE, ANDREW, . . . . .	Cleveland.
STEWART, GILBERT H., . . . . .	Columbus.
STOEHR, OSCAR, . . . . .	Cincinnati.
STRONG, EDWARD W., . . . . .	Cincinnati.
TAFT, WILLIAM H. (Washington, D. C.), . . . . .	Cincinnati.
TALCOTT, WILLIAM E., . . . . .	Cleveland.
TOLLES, SHIRLEY H., . . . . .	Cleveland.
TROUP, JAMES O., . . . . .	Bowling Green.
VANDEMAN, JOHN N., . . . . .	Dayton.
VORYS, ARTHUR I., . . . . .	Lancaster.
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WORTHINGTON, WILLIAM, . . . . .	Cincinnati.
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## OKLAHOMA TERRITORY.

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BEAUCHAMP, JAMES K., . . . . .	Enid.
BIERER, A. G. CURTIN, . . . . .	Guthrie.
BLAKE, ERNEST E., . . . . .	El Reno.
BURFORD, JOHN HENRY, . . . . .	Guthrie.
BURWELL, BENJAMIN F., . . . . .	Oklahoma City.
FULTON, E. L., . . . . .	Pawnee.
GILLETTE, FRANK E., . . . . .	Anadarko.
HAINER, BAYARD T., . . . . .	Perry.
HUSTON, ABRAHAM H., . . . . .	Guthrie.
IRWIN, C. F., . . . . .	El Reno.
KANE, MATTHEW J., . . . . .	Kingfisher.
MACKEY, ARTHUR M., . . . . .	Pond Creek.
MARTIN, HENRY B., . . . . .	Perry.
PANCOAST, J. L., . . . . .	Alva.
SCOTT, JOEL R., . . . . .	Perry.
WELLS, FRANK, . . . . .	Oklahoma City.
WOMACK, T. J., . . . . .	Alva.
WRIGHTSMAN, CHARLES J., . . . . .	Pawnee.

## OREGON.

BEAN, ROBERT S., . . . . .	Salem.
CAREY, CHARLES H., . . . . .	Portland.
FENTON, WILLIAM D., . . . . .	Portland.

## OREGON.—Continued.

HOLMAN, FREDERICK V.,	Portland.
MOORE, F. A.,	Salem.
SCHNABEL, CHARLES J.,	Portland.
STILLMAN, ALPHONSO D.,	Pendleton.

## PENNSYLVANIA.

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BAYARD, JAMES WILSON,	Philadelphia.
BEDFORD, J. CLAUDE,	Philadelphia.
BEEBER, DIMNER,	Philadelphia.
BELL, JOHN C.,	Philadelphia.
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BINNEY, CHARLES CHAUNCEY,	Philadelphia.
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BROWN, FRANCIS SHUNK,	Philadelphia.
BROWN, J. HAY,	Lancaster.
BROWN, JOHN A.,	Philadelphia.
BROWN, JOHN DOUGLASS, JR.,	Philadelphia.
BUCHER, JOSEPH C.,	Lewisburg.
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DANA, SAMUEL W.,	New Castle.
DICKSON, SAMUEL,	Philadelphia.
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EWING, NATHANIEL,	Uniontown.
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FOX, EDWARD J.,	Easton.

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FUTRELL, WILLIAM H., . . . . .	Philadelphia.
GATES, THOMAS S., . . . . .	Philadelphia.
GEST, JOHN MARSHALL, . . . . .	Philadelphia.
GEYELIN, HENRY LAUSSAT, . . . . .	Philadelphia.
GILBERT, LYMAN D., . . . . .	Harrisburg.
GIVEN, WILLIAM B., . . . . .	Columbia.
GLASGOW, WILLIAM A., JR., . . . . .	Philadelphia.
GRAHAM, GEORGE S., . . . . .	Philadelphia.
GRIFFITH, WARREN G., . . . . .	Philadelphia.
GUTHRIE, GEORGE W., . . . . .	Pittsburg.
HALL, WILLIAM M., JR., . . . . .	Pittsburg.
HAMMOND, WILLIAM S., . . . . .	Altoona.
HARGEST, WILLIAM M., . . . . .	Harrisburg.
HARRITY, WILLIAM F., . . . . .	Philadelphia.
HEMPHILL, JOSEPH, . . . . .	West Chester.
HENSEL, W. U., . . . . .	Lancaster.
HEWITT, LUTHER E., . . . . .	Philadelphia.
HIESTER, ISAAC, . . . . .	Reading.
HOWSON, CHARLES, . . . . .	Philadelphia.
HOYT, HENRY M. (Washington, D. C.), . . . . .	Philadelphia.
HUNTER, ERNEST HOWARD, . . . . .	Philadelphia.
JAYNE, H. LABARRE, . . . . .	Philadelphia.
JONES, J. LEVERING, . . . . .	Philadelphia.
JONES, RICHMOND L., . . . . .	Reading.
KANE, FRANCIS FISHER, . . . . .	Philadelphia.
KAY, JAMES I., . . . . .	Pittsburg.
KEATOR, JOHN F., . . . . .	Philadelphia.
KNOX, P. C. (Washington, D. C.), . . . . .	Pittsburg.
KULP, GEORGE B., . . . . .	Wilkes Barre.
LAMBERTON, JAMES M., . . . . .	Harrisburg.
LANDIS, CHARLES J., . . . . .	Lancaster.
LEWIS, FRANCIS D., . . . . .	Philadelphia.
LEWIS, JOHN F., . . . . .	Philadelphia.
LEWIS, W. DRAPER, . . . . .	Philadelphia.
LINDSEY, EDWARD, . . . . .	Warren.
LIVINGOOD, FRANK S., . . . . .	Reading.
LYON, WALTER, . . . . .	Pittsburg.
MAFFETT, JAMES T., . . . . .	Clarion.
MARTIN, J. WILLIS, . . . . .	Philadelphia.
MERCER, GEORGE GLUYAS, . . . . .	Philadelphia.
MERCUR, RODNEY A., . . . . .	Towanda.

## PENNSYLVANIA.—Continued.

MERVINE, NICHOLAS P.,	Altoona.
MESTREZAT, S. LESLIE,	Uniontown.
MICKELL, WILLIAM E.,	Philadelphia.
MILLER, E. SPENCER,	Philadelphia.
MILLER, N. DUBOIS,	Philadelphia.
MINER, SIDNEY R.,	Wilkes Barre.
MORGAN, CHARLES E., JR.,	Philadelphia.
MORGAN, RANDAL,	Philadelphia.
MULLIN, EUGENE,	Bradford City.
MUNSON, C. LARUE,	Williamsport.
McCLINTOCK, ANDREW H.,	Wilkes Barre.
McCLUNG, WM. H.,	Pittsburg.
McCLUBE, HAROLD M.,	Lewisburg.
McKEE, CHARLES H.,	Pittsburg.
NICHOLS, H. S. P.,	Philadelphia.
NILES, HENRY C.,	York.
NORTH, E. D.,	Lancaster.
NORTH, HUGH M.,	Columbia.
PAGE, HOWARD W.,	Philadelphia.
PAGE, S. DAVIS,	Philadelphia.
PALMER, HENRY W.,	Wilkes Barre.
PANCOAST, CHARLES E.,	Philadelphia.
PATTERSON, GEORGE S.,	Philadelphia.
PATTERSON, ROSWELL H.,	Scranton.
PATTERSON, T. ELLIOTT,	Philadelphia.
PATTERSON, THOMAS,	Pittsburg.
PEALE, S. R.,	Lock Haven.
PENNYPACKER, CHARLES H.,	West Chester.
PENNYPACKER, SAMUEL W.,	Harrisburg.
PEPPER, GEORGE WHARTON,	Philadelphia.
PETTIT, HORACE,	Philadelphia.
PORTER, WILLIAM D.,	Pittsburg.
POTTER, WILLIAM P.,	Pittsburg.
PRICHARD, FRANK P.,	Philadelphia.
RALSTON, ROBERT,	Philadelphia.
RAWLE, FRANCIS,	Philadelphia.
RAWLE, FRANCIS WILLIAM,	Philadelphia.
REARDON, JOHN J.,	Williamsport.
RICE, WILLIAM E.,	Warren.
RYON, WILLIAM W.,	Shamokin.
SCOTT, WILLIAM,	Pittsburg.
SEIBERT, WILLIAM N.,	New Bloomfield.
SHAPLEY, RUFUS E.,	Philadelphia.
SHIELDS, J. M.,	Pittsburg.

## PENNSYLVANIA.—Continued.

SHIRAS, GEORGE, JR., . . . . .	Pittsburg.
SIMPSON, ALEXANDER, JR., . . . . .	Philadelphia.
SMEAD, A. D. B., . . . . .	Carlisle.
SMITH, ALFRED PERCIVAL, . . . . .	Philadelphia.
SMITH, THOMAS KILBY, . . . . .	Philadelphia.
SMITH, WALTER GEORGE, . . . . .	Philadelphia.
SMITHERS, WILLIAM W., . . . . .	Philadelphia.
SNARE, JACOB, . . . . .	Philadelphia.
STAAKE, WILLIAM H., . . . . .	Philadelphia.
STEELE, HENRY J., . . . . .	Easton.
STERRETT, JAMES R., . . . . .	Pittsburg.
STEWART, RUSSELL C., . . . . .	Easton.
STEWART, W. F. BAY, . . . . .	York.
STILLWELL, JAMES C., . . . . .	Philadelphia.
STOEVEY, WILLIAM C., . . . . .	Philadelphia.
STOUGHTON, A. B., . . . . .	Philadelphia.
STRAWBRIDGE, WILLIAM C., . . . . .	Philadelphia.
SULZBERGER, MAYER, . . . . .	Philadelphia.
SYNNESTVEDT, PAUL, . . . . .	Pittsburg.
TAULANE, JOSEPH H., . . . . .	Philadelphia.
TAYLOR, JOSEPH T., . . . . .	Philadelphia.
TODD, M. HAMPTON, . . . . .	Philadelphia.
TOWNSEND, CHARLES C., . . . . .	Philadelphia.
TRICKETT, WILLIAM, . . . . .	Carlisle.
UMBEL, ROBERT E., . . . . .	Uniontown.
VON MOSCHZISKE, ROBERT, . . . . .	Philadelphia.
WALTON, HENRY F., . . . . .	Philadelphia.
WATERS, ASA W., . . . . .	Philadelphia.
WATSON, D. T., . . . . .	Pittsburg.
WATTERSON, A. V. D., . . . . .	Pittsburg.
WAY, WILLIAM A., . . . . .	Pittsburg.
WEAVER, JOHN, . . . . .	Philadelphia.
WEIL, A. LEO, . . . . .	Pittsburg.
WHITLOCK, HENRY C., . . . . .	Philadelphia.
WILCOX, WILLIAM A., . . . . .	Scranton.
WILLARD, EDWARD N., . . . . .	Scranton.
WILLIAMS, IRA JEWELL, . . . . .	Philadelphia.
WINDLE, WILLIAM S., . . . . .	West Chester.
WINTERITZ, BENJAMIN A., . . . . .	New Castle.
WISE, JESSE H., . . . . .	Pittsburg.
WOLVERTON, SIMON P., . . . . .	Sunbury.
WOODRUFF, CLINTON ROGERS, . . . . .	Philadelphia.
WORK, JAMES C., . . . . .	Uniontown.

## PHILIPPINE ISLANDS.

YANCEY, DAVID WALKER, . . . . . Manila.

## RHODE ISLAND.

ANGELL, WALTER F., . . . . . Providence.  
 BAKER, ALBERT A., . . . . . Providence.  
 BAKER, DARIUS, . . . . . Newport.  
 COLT, LEBARON B., . . . . . Providence.  
 CURTIS, HARRY C., . . . . . Providence.  
 EATON, AMASA M., . . . . . Providence.  
 HOGAN, JOHN W., . . . . . Providence.  
 JENCKES, THOMAS A., . . . . . Providence.  
 LITTLEFIELD, NATHAN W., . . . . . Providence.  
 MILLER, AUGUSTUS S., . . . . . Providence.  
 POTTER, DEXTER B., . . . . . Providence.  
 STEARNS, CHARLES F., . . . . . Providence.  
 STINESS, JOHN H., . . . . . Providence.  
 THURSTON, WILMARTH H., . . . . . Providence.  
 TILLINGHAST, JAMES, . . . . . Providence.  
 WOODS, JOHN CARTER BROWN, . . . . . Providence.

## SOUTH CAROLINA.

BUIST, GEORGE LAMB, . . . . . Charleston.  
 BUIST, HENRY, . . . . . Charleston.  
 LYLES, WILLIAM H., . . . . . Columbia.  
 MOORE, M. HERNDON, . . . . . Columbia.  
 MORDECAI, T. MOULTRIE, . . . . . Charleston.  
 MOWER, GEORGE SEWELL, . . . . . Newberry.  
 McMAHON, JOHN J., . . . . . Columbia.  
 SMYTHE, AUGUSTINE T., . . . . . Charleston.  
 WILCOX, P. A., . . . . . Florence.  
 WOODS, CHARLES A., . . . . . Marion.  
 YOUNG, HENRY E., . . . . . Charleston.

## SOUTH DAKOTA.

AIKENS, FRANK R., . . . . . Sioux Falls.  
 BAILEY, CHARLES O., . . . . . Sioux Falls.  
 CRAWFORD, COE I., . . . . . Huron.  
 GOODNER, IVAN W., . . . . . Pierre.  
 TRIPP, BARTLETT, . . . . . Yankton.  
 VOORHEES, JOHN H., . . . . . Sioux Falls.  
 WELLS, ROLLIN J., . . . . . Sioux Falls.

## TENNESSEE.

BAXTER, E. J.,	Jonesboro.
BAXTER, ED.,	Nashville.
BONNER, J. W.,	Nashville.
CAMP, E. C.,	Knoxville.
CAMPBELL, LEMUEL R.,	Nashville.
CARROLL, WILLIAM H.,	Memphis.
CATES, CHARLES T., JR.,	Knoxville.
HARWOOD, THOMAS E.,	Trenton.
HEISKELL, F. H.,	Memphis.
HENDERSON, G. MC.,	Rutledge.
INGERSOLL, HENRY H.,	Knoxville.
JACKSON, ROBERT F.,	Nashville.
LEA, OVERTON,	Nashville.
LUSK, ROBERT,	Nashville.
MALONE, JAMES H.,	Memphis.
MALONE, THOMAS H.,	Nashville.
MAYFIELD, J. E.,	Cleveland.
METCALF, CHARLES W.,	Memphis.
MOUNTCASTLE, R. E. L.,	Knoxville.
PILCHER, JAMES S.,	Nashville.
RAMAGE, B. J.,	Sewanee.
SANFORD, EDWARD T.,	Knoxville.
SWANEY, W. B.,	Chattanooga.
TILLMAN, A. M.,	Nashville.
VAN DEVENTER, HORACE,	Knoxville.
VERTREES, JOHN J.,	Nashville.
YOUNG, DAVID K.,	Clinton.

## TEXAS.

ALEXANDER, L. C.,	Waco.
AUTRY, JAMES L.,	Beaumont.
BURGES, ALFRED RUST,	San Angelo.
BURGES, WILLIAM H.,	El Paso.
CARLOCK, R. L.,	Fort Worth.
CARTER, H. C.,	San Antonio.
COKE, HENRY C.,	Dallas.
DILLARD, F. C.,	Sherman.
DUFF, R. C.,	Beaumont.
EDWARDS, PEYTON F.,	El Paso.
GAINES, R. R.,	Austin.
GOULD, GEORGE H.,	Palestine.
KEMP, WYNDHAM,	El Paso.
LINDSLEY, PHILIP,	Dallas.



## TEXAS.—Continued.

MILLER, CLARENCE H.,	Austin.
MILLER, T. S.,	Dallas.
PARKER, JOHN W.,	Taylor.
PHILLIPS, NELSON,	Hillsboro.
SAMUELS, SIDNEY L.,	Fort Worth.
SANER, ROBERT E. LEE,	Dallas.
SEARCY, WILLIAM W.,	Brenham.
SEMPLE, JOHN M.,	Sherman.
SMITH, ROBERT WAVERLEY,	Galveston.
SPOONTS, M. A.,	Fort Worth.
STREET, ROBERT G.,	Galveston.
TERRY, J. W.,	Galveston.
WALTHALL, A. M.,	El Paso.
WILLIAMS, HORACE B.,	Dallas.

## UTAH.

CRITCHLOW, EDWARD B.,	Salt Lake City.
KINNEY, CLESSON S.,	Salt Lake City.
VARIAN, CHARLES S.,	Salt Lake City.
WILLIAMS, P. L.,	Salt Lake City.

## VERMONT.

BARBER, O. M.,	Bennington.
McCULLOUGH, JOHN G.,	No. Bennington.
TAFT, ELIHU B.,	Burlington.

## VIRGINIA.

ADAMS, RICHARD H. T., JR.,	Lynchburg.
ANDERSON, WILLIAM A.,	Lexington.
ATKINSON, HENRY A.,	Richmond.
BARBOUR, JOHN S.,	Culpepper.
BRAXTON, A. C.,	Staunton.
BRYAN, GEORGE,	Richmond.
BULLITT, JOSHUA F.,	Big Stone Gap.
CABELL, JAMES ALSTON,	Richmond.
CATON, JAMES R.,	Alexandria.
CHRISTIAN, FRANK P.,	Lynchburg.
CHRISTIAN, FRANK W.,	Richmond.
COCKE, LUCIAN H.,	Roanoke.
COKE, JOHN A.,	Richmond.
CUMMING, S. GORDON,	Hampton.
DAVIS, CHARLES HALL,	Petersburg.

## VIRGINIA.—Continued.

DAVIS, RICHARD B., . . . . .	Petersburg.
DRAPER, JOHN S., JR., . . . . .	Pulaski.
FLOOD, H. D., . . . . .	W. Appomattox.
FULKERSON, SAMUEL V., . . . . .	Bristol.
GARNETT, THEODORE S., . . . . .	Norfolk.
GILLIAM, MARSHALL M., . . . . .	Richmond.
GILMORE, JAMES H., . . . . .	Marion.
GRAVES, CHARLES A., . . . . .	Charlottesville.
GREGORY, ROGER, . . . . .	Richmond.
GRIFFIN, S., . . . . .	Bedford City.
GRINNAN, DANIEL, . . . . .	Richmond.
HAMILTON, ALEXANDER, . . . . .	Petersburg.
HARRIS, JOHN T., . . . . .	Harrisonburg.
HARRISON, RANDOLPH, . . . . .	Lynchburg.
HATTON, GOODRICH, . . . . .	Portsmouth.
HENSON, W. J., . . . . .	Pearisburg.
HUGHES, ROBERT M., . . . . .	Norfolk.
HUNTON, EPPA, JR., . . . . .	Richmond.
KILBY, WILBUR J., . . . . .	Suffolk.
LEWIS, JOHN H., . . . . .	Lynchburg.
LEWIS, LUNSFORD L., . . . . .	Richmond.
LONG, ARMISTEAD R., . . . . .	Lynchburg.
MASSIE, EUGENE C., . . . . .	Richmond.
MEREDITH, CHARLES V., . . . . .	Richmond.
MILLER, HUGH GORDON, . . . . .	Norfolk.
MINOR, RALEIGH C., . . . . .	Charlottesville.
MUNFORD, BEVERLEY B., . . . . .	Richmond.
MCALLISTER, J. T., . . . . .	Hot Springs.
McHUGH, CHARLES A., . . . . .	Roanoke.
PAGE, ROSEWELL, . . . . .	Richmond.
PATTESON, S. S. P., . . . . .	Richmond.
PHLEGAR, ARCHER A., . . . . .	Christiansburg.
PICKRELL, JOHN, . . . . .	Richmond.
PRENTIS, ROBERT R., . . . . .	Suffolk.
ROBERTSON, WILLIAM GORDON, . . . . .	Roanoke.
ROYALL, WILLIAM L., . . . . .	Richmond.
SCOTT, R. CARTER, . . . . .	Richmond.
SEATON, EMMETT, . . . . .	Richmond.
SIPE, GEORGE E., . . . . .	Harrisonburg.
SMITH, WILLIS B., . . . . .	Richmond.
STERN, JO. LANE, . . . . .	Richmond.
TENNANT, W. B., . . . . .	Richmond.
THOM, ALFRED P., . . . . .	Norfolk.
THOMASON, E. B., . . . . .	Richmond.

## VIRGINIA.—Continued.

TOWNES, WILLIAM A., . . . . .	Richmond.
TUCKER, HENRY ST. GEORGE, . . . . .	Lexington.
VANCE, WILLIAM R. (Washington, D. C.), . . . . .	Charlottesville.
WATTS, LEGH R., . . . . .	Portsmouth.
WICKHAM, HENRY T., . . . . .	Richmond.
WILLARD, JOSEPH E., . . . . .	Fairfax.
WILLIAMS, CHARLES U., . . . . .	Richmond.
WILLIAMS, E. RANDOLPH, . . . . .	Richmond.
WYSOR, JOSEPH C., . . . . .	Pulaski.
YARRELL, LEONIDAS D., . . . . .	Emporia.

## WASHINGTON.

BUNN, JOHN MARSHALL, . . . . .	Spokane.
DEWART, FREDERICK W., . . . . .	Spokane.
EVERETTE, WILLIS E., . . . . .	Tacoma.
FORSTER, GEORGE M., . . . . .	Spokane.
HANFORD, CORNELIUS H., . . . . .	Seattle.
HUGHES, E. C., . . . . .	Seattle.
PRICE, JOHN G., . . . . .	Seattle.
ROBB, BAMFORD A., . . . . .	Seattle.
SHEPARD, CHARLES E., . . . . .	Seattle.
TURNER, GEORGE, . . . . .	Spokane.
WAKEFIELD, WILLIAM J. C., . . . . .	Spokane.

## WEST VIRGINIA.

AMBLER, B. MASON, . . . . .	Parkersburg.
ARCHER, V. B., . . . . .	Parkersburg.
BRANNON, W. W., . . . . .	Weston.
BRATTON, WILLIAM A., . . . . .	Marlinton.
COOPER, JOHN T., . . . . .	Parkersburg.
DAVIS, DABNEY C. T., JR., . . . . .	Lewisburg.
HIGGINBOTHAM, C. C., . . . . .	Buckhannon.
HUBBARD, WILLIAM P., . . . . .	Wheeling.
MERRICK, CHARLES D., . . . . .	Parkersburg.
MILLER, WILLIAM N., . . . . .	Parkersburg.
MOLLOHAN, WESLEY, . . . . .	Charleston.
PRICE, GEORGE E., . . . . .	Charleston.
SMITH, EDWARD GRANDISON, . . . . .	Clarksburg.
SMITH, HARVEY F., . . . . .	Clarksburg.
TURNER, SMITH D., . . . . .	Parkersburg.
VANDERVORT, JAMES W., . . . . .	Parkersburg.
VAN WINKLE, W. W., . . . . .	Parkersburg.
WHITE, ROBERT, . . . . .	Wheeling.
WOLFE, WILLIAM HENRY, JR., . . . . .	Parkersburg.

## WISCONSIN.

BARBER, CHARLES, . . . . .	Oshkosh.
BARTLETT, WILLIAM PITT, . . . . .	Eau Claire.
BASHFORD, R. M., . . . . .	Madison.
BURKE, JOHN F., . . . . .	Milwaukee.
CARY, ALFRED L., . . . . .	Milwaukee.
FAIRCHILD, H. O., . . . . .	Green Bay.
FLANDERS, JAMES G., . . . . .	Milwaukee.
FROST, EDWARD W., . . . . .	Milwaukee.
GILMORE, EUGENE ALLEN, . . . . .	Madison.
GILSON, NORMAN S., . . . . .	Fond du Lac.
GRACE, H. H., . . . . .	West Superior.
GREENE, GEORGE G., . . . . .	Green Bay.
HUNTER, CHARLES F., . . . . .	Milwaukee.
JEFFRIES, MALCOLM G., . . . . .	Janesville.
JENKINS, JAMES G., . . . . .	Milwaukee.
JONES, BURR W., . . . . .	Madison.
KERWIN, J. C., . . . . .	Neenah.
LUDWIG, JOHN C., . . . . .	Milwaukee.
MILLER, BENJAMIN K., . . . . .	Milwaukee.
MILLER, GEORGE P., . . . . .	Milwaukee.
MORRIS, HOWARD, . . . . .	Milwaukee.
OGDEN, LEWIS M., . . . . .	Milwaukee.
ORTON, PHILO A., . . . . .	Darlington.
PERELES, JAMES M., . . . . .	Milwaukee.
PERELES, THOMAS JEFFERSON, . . . . .	Milwaukee.
QUARLES, CHARLES, . . . . .	Milwaukee.
QUARLES, JOSEPH V. (Washington, D. C.), . . . . .	Milwaukee.
RICHARDS, HARRY S., . . . . .	Madison.
SEAMAN, WILLIAM H., . . . . .	Sheboygan.
SIEBECKER, ROBERT G., . . . . .	Madison.
SMITH, HOWARD L., . . . . .	Madison.
SPOONER, CHARLES P., . . . . .	Milwaukee.
SPOONER, JOHN C., . . . . .	Madison.
STAFFORD, W. H., . . . . .	Chippewa Falls.
STARK, JOSHUA, . . . . .	Milwaukee.
THOMPSON, E. A., . . . . .	Oshkosh.
TURNER, W. J., . . . . .	Milwaukee.
VAN DYKE, GEORGE D., . . . . .	Milwaukee.
VAN DYKE, WILLIAM D., . . . . .	Milwaukee.
VILAS, EDWARD P., . . . . .	Milwaukee.
WIGMAN, J. H. M., . . . . .	Green Bay.
WINKLER, FREDERICK C., . . . . .	Milwaukee.

## WYOMING.

ARNOLD, CONSTANTINE P., . . . . .	Laramie.
BROWN, MELVILLE C. (Juneau, Alaska), . . . .	Laramie.
BURDICK, CHARLES W., . . . . .	Cheyenne.
BURKE, TIMOTHY F., . . . . .	Cheyenne.
CLARK, GIBSON, . . . . .	Cheyenne.
CORN, SAMUEL, . . . . .	Cheyenne.
CORTHELL, NELLIS E., . . . . .	Laramie.
KNIGHT, JESSE, . . . . .	Cheyenne.
LACEY, JOHN W., . . . . .	Cheyenne.
POTTER, CHARLES N., . . . . .	Cheyenne.
VAN DEVANTER, WILLIS, . . . . .	Cheyenne.
VAN ORSDER, JOSIAH A., . . . . .	Cheyenne.

## RECAPITULATION.

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STATES.	NO. OF MEMBERS.	STATES.	NO. OF MEMBERS.
Alabama, . . . . .	14	Nebraska, . . . . .	52
Alaska Territory, . . . . .	2	Nevada, . . . . .	1
Arizona Territory, . . . . .	5	New Hampshire, . . . . .	13
Arkansas, . . . . .	31	New Jersey, . . . . .	42
California, . . . . .	21	New Mexico Territory, . . . . .	1
Colorado, . . . . .	108	New York, . . . . .	199
Connecticut, . . . . .	42	North Carolina, . . . . .	11
Delaware, . . . . .	11	North Dakota, . . . . .	5
District of Columbia, . . . . .	73	Ohio, . . . . .	85
Florida, . . . . .	15	Oklahoma Territory, . . . . .	20
Georgia, . . . . .	45	Oregon, . . . . .	7
Hawaii Territory, . . . . .	4	Pennsylvania, . . . . .	168
Idaho, . . . . .	4	Philippine Islands, . . . . .	1
Illinois, . . . . .	123	Rhode Island, . . . . .	16
Indian Territory, . . . . .	10	South Carolina, . . . . .	11
Indiana, . . . . .	78	South Dakota, . . . . .	7
Iowa, . . . . .	47	Tennessee, . . . . .	27
Kansas, . . . . .	20	Texas, . . . . .	28
Kentucky, . . . . .	36	Utah, . . . . .	4
Louisiana, . . . . .	28	Vermont, . . . . .	3
Maine, . . . . .	21	Virginia, . . . . .	69
Maryland, . . . . .	69	Washington, . . . . .	11
Massachusetts, . . . . .	130	West Virginia, . . . . .	19
Michigan, . . . . .	60	Wisconsin, . . . . .	42
Minnesota, . . . . .	25	Wyoming, . . . . .	12
Mississippi, . . . . .	6		
Missouri, . . . . .	113		
Montana, . . . . .	5		
		Total, . . . . .	2,000

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## APPENDIX.

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## ADDRESS OF THE PRESIDENT. .

JAMES HAGERMAN,  
OF ST. LOUIS, MISSOURI.

*Gentlemen of the American Bar Association :*

We are met under historical and international environments. Disregarding the precedents of former years, when the place of our meeting has been selected for the quietude of its surroundings, we are now in the very midst of the hurly burly of the world's greatest exposition. This beautiful creation, this splendid picture, hung out under our Missouri sky, the marvelous exhibits within these mammoth buildings, the wonderful congregation of men and women from all nations of the earth, are but outward trappings celebrative of the great historical event which we now commemorate. Next to the Declaration of Independence and the adoption of the Federal Constitution and the successful inauguration of our government with Washington as President, was the acquisition of Louisiana under the administration of Thomas Jefferson. The Oregon exploration and discovery, the acquisition of the Floridas, the annexation of Texas, the acquisition of New Mexico, Arizona and California followed in such swift succession as to be acts of the same great drama with all the unities preserved. From a republic with only an eastern seaboard, confined between English possessions on the north and those of Spain on the south, without the right to follow to the sea even that part of the Mississippi and its tributaries which then lay within our bounds, we became almost at once a mighty continental nation. These acquisitions of territories and their orderly development made our republic truly a world power, dedicated to the preservation and perpetuation of republican institutions. The nation into which we were thus enlarged sustained such geographical relations, lying between the great lakes on the north and

the gulf on the south with the two great oceans on either side, embracing mountains and valleys and plains and owning the sources and mouths of its mighty rivers, that no power, not even a civil war, could rend it asunder. To this day we may shudder to think what might have happened to our country if Louisiana had not become ours. Spain had just relinquished it to France. France under the stress of the Napoleonic wars yielded it to keep it from England; and we know that England's eye was upon it, for even as late as 1815 the English fleet which bore Packenham and his army to New Orleans, carried a full corps of officers to take possession of the country and govern it in the name and for the glory of the English crown. It therefore seems fitting that this Association, in one year of a life which I trust will continue as long as the republic and as lawyers endure, should take note of this memorable achievement and participate in its celebration. But I must pass from this alluring theme to the duty of the hour.

Since the last meeting of this Association regular sessions of the legislatures have been held in Georgia, Iowa, Kentucky, Louisiana, Maryland, Mississippi, Massachusetts, New Jersey, New York, Ohio, Rhode Island, South Carolina and Virginia—thirteen in all. In Oregon there has been a special session, and the people of Oregon, under the initiative and referendum clause of their constitution, have passed certain legislative acts. Montana has held an extraordinary session, and in Virginia the prolonged extra session of 1902-3-4, rendered necessary by the new constitution of that commonwealth, which went into effect July 10, 1902, has been concluded. The territorial legislature of Hawaii has had a special session. Porto Rico has held the second session of its Second Legislative Assembly, and also an extraordinary session. The Philippine Commission, a composite body originally created by the President of the United States as Commander-in-Chief of the army and navy, and subsequently confirmed by Congress, exercising full legislative powers, has enacted many laws

governing the people of the Philippine Islands. The second session of the Fifty-eighth Congress of the United States, commencing on December 7th of last year and terminating on April 30th of this year, an unusually short period for the long session, has been held and passed into history.

Of the states which have held legislative sessions, three only—Iowa, Louisiana and Montana—lie within the domain of the Louisiana purchase. The only other state west of the Mississippi River where a session was held is Oregon, which was acquired by original discovery and occupation and confirmed by treaties with England and Spain. Within the country of the Northwestern Territory owned by the United States at the adoption of the Constitution, Ohio alone has had a legislative session. Georgia, Maryland, Massachusetts, New Jersey, New York, Rhode Island, South Carolina and Virginia represent the original states at the adoption of the Constitution, for Kentucky was carved out of Virginia and Mississippi in part out of Georgia and in part from a portion of the Floridas ceded by Spain.

The geographical area of all the American states is approximately 2,719,500 square miles, with a population of 74,698,440, while that of the states which have held legislative sessions is approximately 686,380 square miles, with a population of 31,111,672, only about 25 per cent. of the area and 42 per cent. of the population. Your President's address this year, so far as the states are concerned, is confined to a limited area with a limited population compared with that enjoyed by his predecessors in the odd years, and you are subjected to the painful disadvantage of not now enjoying a broad and comprehensive view of state legislative work. When you have heard only in part what has been done by those legislatures which have been in action since your last adjournment, I will leave to your imagination to supply what would have been done if the whole range of legislative batteries of the different states had been set in martial array. Annual sessions are now held in only six states—Georgia, Massachusetts, New Jersey, New

York, Rhode Island and South Carolina—a quadrennial session in one, Alabama, and biennial sessions in the others. There has been for many years a growing tendency towards the abolition of annual sessions, and South Carolina has within the year submitted a constitutional amendment abolishing them and providing for biennial sessions. When biennial sessions are adopted by all the states, in order to afford the Presidents of this Association equal fields and each meeting of the Association equal delight, there should be a redistribution, so that one-half may be held in alternate years. Against quadrennial sessions, in the name of this Association and on behalf of its future Presidents, I here enter my protest, for if they should be universally adopted, for three years out of four the President's address, like Othello's occupation, would be gone, unless, indeed, our dominions should continue to spread and Congress and war legislative commissions and outlying territorial legislatures increase their activities. In the fourth year a special session of our Association would have to be held to hear the grand review, for it cannot be conceived that in a body like ours, entrenched in precedent, the President's address could be omitted or its subject changed. Let me add, to reconcile you to the disappointment at the paucity of legislative material at hand, that this is a presidential year and an examination of the records will show that for some reason, which if I knew I would not attempt to explain, during the years in which presidential elections are held our legislative bodies, state and national, are in a condition of partially suspended animation and do not do their level best.

#### OREGON.

The occasion of the special session in Oregon, lasting only three days, seems to have been a necessity to amend the revenue laws of the state to provide a more efficient method for the assessment and collection of taxes; to aid the navigation of the Columbia River, and its improvement by means of canals

and work on the channel of the river, and to memorialize Congress for an appropriation to aid the celebration of the centennial of the exploration of the Oregon country by Lewis and Clark.

There seems to be nothing noteworthy about the act which was passed amendatory of the revenue law.

The act relating to the Columbia River created a Board of Commissioners of Canals and Locks and authorized it in behalf of the state to acquire rights of way for the United States to carry out its contemplated improvements and to secure their release from all claims for damages done by the work and appropriated a considerable sum to that end.

The Revenue Act and the Columbia River Act, in order to become effective immediately, despite the initiative and referendum clause of the Oregon constitution, each contained an emergency provision to this effect: "It is hereby adjudged and declared that existing conditions are such that this act is necessary for the immediate preservation of the public peace, health and safety and excepted from the operation and power of the referendum, and an emergency is hereby declared to exist, and this act shall take effect immediately." Had it not been for this emergency provision, these acts under the constitutional clause referred to could not have taken effect for some time after their passage, and in the meantime might have been subjected to the veto of the referendum.

The memorial in behalf of the Lewis and Clark Centennial Exposition is a strong appeal for an appropriation by the United States in aid of that patriotic enterprise. It breathes the spirit of territorial expansion, eulogizes Jefferson and states that while he was minister to France and twenty years before any thought was given to the idea of acquiring territory west of the Mississippi River, except the island of Orleans at the mouth of the river he had planned to locate an American settlement on the northwest coast of North America, referring, evidently, to his attempt in 1786 to secure for a citizen of Connecticut permission to pass through Russia and

over Behring Straits to the North American coast, and thence overland to the United States. Speaking of the Pacific Coast, the memorial says:

“The Legislative Assembly of the State of Oregon specially sets forth to the Congress of the United States that the Lewis and Clark Centennial Exposition will be representative in every respect of the tremendous progress and development of the great West in the century just passed, and, as an undertaking of so far reaching a character, merits the full measure of co-operation and support from the national government. The Pacific Coast, notwithstanding the large and important part it has played in the upbuilding of the nation and in rounding it out to its fullness as a world power, never has been favored with a government appropriation for an exposition. Over its shores the American flag waved in its first journey around the world from Boston and return, by way of the Columbia River and China. The humble fort that Lewis and Clark built at Clatsop in the winter of 1805 gave the United States its first foothold upon the Pacific Ocean—that theater of the world's new activities—and paved the way for the expansion that has increased the national domain from 827,000 square miles in 1783 to 3,727,000 square miles in 1903. The philosophy that taught President Jefferson that the mountain chain feeding so considerable a river as the Missouri on the east must be the source of another large stream flowing westward opened the path of civilization to the Pacific and provided, through our own country, the route to India, which was for centuries the dream and hope of every navigator from Columbus down to recent times. At the Columbia River, San Francisco Bay, Puget Sound, Honolulu and Manila the United States is fortified to occupy, in war or in peace, the high station in the council of nations to which events in the Pacific have called it. Having faithfully discharged to the nation every obligation imposed upon it as an integral part of the union, or falling to it by reason of its environments, having in time of war responded to every call made upon it for the national defense, and having in time of peace poured forth its wealth of mines, farm and range for the general welfare, the Pacific Coast now asks from Congress, in the matter of the Lewis and Clark Centennial Exposition, the consideration which its past service to the nation and the merit of its cause deserve.”

This eloquent plea was not lost upon Congress, for on April 13, 1904, it passed an act authorizing the government to participate in celebrating the hundredth anniversary of the Oregon exploration by Lewis and Clark, providing for a government board, a comprehensive government exhibit, for exhibits from Alaska, Hawaii and the Philippine Islands, for the issuance of memorial gold dollars at cost, for the erection of suitable buildings and appropriating sums of money aggregating \$500,000. It seems proper that your President at this stage of the meeting should call attention to this exposition to be held in Portland in 1905, to dispel the illusion that the exposition where we are now assembled is to be the last. So there will be no excuse for the members of this Association failing to give close attendance at its present meetings on the ground that there are to be no more expositions.

During the year, under the initiative and referendum clause of the Oregon constitution, two bills have been enacted by the people of Oregon. One provides for direct primary nominations of candidates for public office by the people without the intervention of political conventions, and the other is a local option liquor law. A third law, providing a salary instead of fees for the state printer, was proposed under the initiative and referendum plan, but defeated at the election. The bills under this method of procedure were drawn in the form of legislative acts, signed by the requisite number of voters, filed with the secretary of state, and published; notice of the election was given, and the election held practically under the general election laws of the state.

The act providing for direct primary nominations is novel and a radical innovation.

Its title covers three, and its preamble two, printed octavo pages in which there is much fine writing. The enacting clause reads, "Be it enacted by the people of the State of Oregon." Aside from the title and preamble there are 46 sections, covering 43 large printed pages, and the whole act contains 1437 lines, or about 14,370 words. Without reflecting in

any manner upon the merits of the measure, anyone reading this law would be pardoned in characterizing it as a most striking example of legislative verbosity. If the bill had passed through a friendly legislature, it is almost certain that by process of revision and amendment in the committees and on the floor its provisions would have been less luxuriant in length and clearer and more concise in language. Those most ardent in their support of the initiative and referendum cannot claim that it will bring about an improvement in legislative style. There has been a growing need in American legislative bodies for an improved legislative style, and some have advocated standing committees which would put all legislative acts in finished form which would express their object accurately and succinctly. Such a method, however, can never be applied under the initiative and referendum, for the bills as filed with the secretary of state are not subject to amendment, and must be either accepted or rejected by the people just as they stand.

The preamble of this act says:

“ Under our form of government political parties are useful and necessary at the present time. It is necessary for the public welfare and safety that every practical guaranty shall be provided by law to assure the people generally, as well as the members of the several parties, that political parties shall be fairly, freely and honestly conducted in appearance as well as in fact. The method of naming candidates for elective public offices by political parties and voluntary political organizations is the best plan yet found for placing before the people the names of qualified and worthy citizens from whom the electors may choose the officers of our government. The government of our state by its electors and the government of a political party by its members are rightfully based on the same general principles. Every political party and every voluntary political organization has the same right to be protected from the interference of persons who are not identified with it as its known and publicly avowed members, that the government of the state has to protect itself from the interference of persons who are not known and registered as its electors. It is as great a wrong to the people, as well as to the members of a political



party, for one who is not known to be one of its members to vote or take any part at any election or other proceedings of such political party as it is for one who is not a qualified and registered elector to vote at any state election or take any part in the business of the state. Every political party and voluntary political organization is rightfully entitled to the sole exclusive use of every word of its official name. The people of the state and members of every political party and voluntary political organization are rightfully entitled to know that every person who offers to take any part in the affairs or business of any political party or voluntary political organization in the state is in good faith a member of such party. The reason for the law which requires a secret ballot when all the electors choose their officers equally requires a secret ballot when the members of a party choose their candidates for public office. It is as necessary for the preservation of the public welfare and safety that there shall be a free and fair vote and an honest count as well as a secret ballot at primary elections, as it is that there shall be a free and fair vote and an honest count in addition to the secret ballot at all elections of public officers. All qualified electors who wish to serve the people in an elective public office are rightfully entitled to equal opportunities under the law.

“The purpose of this law is better to secure and to preserve the rights of political parties and voluntary political organizations and of their members and candidates, and especially of the rights above stated.”

The primary nominating elections are to be held within stated times prior to the general election, and at the primary elections the candidates of all political parties are chosen by plurality vote, and no other candidates of the political parties can be voted for at the general election. The petitions of the candidates for nomination are required to be filed in writing, and must state that the petitioner is a registered voter and a member of the political party from whom he is seeking a nomination, and that if nominated he will accept and will not withdraw, and if elected will qualify. He is also permitted to state, in not exceeding one hundred words, any measures or principles which he especially advocates; and, in not exceeding twelve words, the form in which he wishes them printed after

his name on the nominating ballot. In case the candidate seeking the nomination is a senator or representative in the legislative assembly, he may state either that he will always vote for that candidate for United States senator who has received the highest number of the people's votes for that position at the general election next preceding the election of a senator in Congress without regard to his individual preference, or he may state that he will consider the vote of the people for United States senator as nothing more than a recommendation which he will be at liberty wholly to disregard if the reason for so doing seem to him sufficient. This petition of the candidate must be signed by a given number of registered members of his political party and qualified electors, asking that his name be printed on the official nominating ballot, and it must be verified by one or more of the signers who shall make oath that he or they personally know the signatures thereon to be genuine, and that the post office address and the residence of the candidate are correctly stated and that he is a qualified elector and a registered member of the political party. The votes of the different political parties are kept distinct, and the official ballots are to be printed—for the Republican party in black ink upon good quality of white paper, for the Democratic party in black ink upon good quality of blue paper, and for any third party in black ink upon good quality of yellow paper. The ballot shall be styled "Official Primary Nominating Election Ballot of ——— Party," stating the name of the precinct they are intended for and the date the election is to be held. Provision is made for the preservation of the ballots, and for settlement of contests by the courts. In case of a tie the right to the nomination is to be determined by lot after notice by the secretary of state. The governor is required to make official proclamation declaring who are the nominees of the respective parties. At the primary election the committeemen of the different parties are also elected for the term of two years from the date of the first meeting of the committee immediately following their election. Committees are given power to

fill vacancies, also to elect managing or executive committees, and to make rules and regulations for the government of their respective political parties not inconsistent with the law. This act is probably the strongest that has ever been passed in recognizing political parties as legal institutions and their committees as legal bodies.

Inasmuch as at the primary nominating election only those voters who have been duly registered as members of a political party can vote, and then only for the nomination of candidates of the political party of which they are registered members, it is clear that those who are not registered members of the political parties have no voice in the selection of candidates. The voters who are not registered members of the political parties can take their choice at the general election. There seems to be no provision of the law which requires the voter at the following general election to vote for the candidates of the political party of which he is a registered member.

The initiative and referendum experiences in Oregon are especially interesting to Missourians, for the people of this state are at the approaching election to vote on a constitutional amendment permitting that method of legislation.

#### MONTANA.

The second extraordinary session in Montana was called by proclamation of the governor, which contains the following "whereases":

"WHEREAS, A large per cent. of the resident taxpayers of the state, and many representatives of organized labor and others, have by petitions and otherwise, represented to me the deplorable industrial condition existing in three of the populous cities of the state, as well as in many other localities within our borders, consequent upon the cessation of operations of many large industries in the state, and

"WHEREAS, They further represent the desirability of general legislation by which the bias and prejudice of district judges be made a disqualification of such judges to try any case that may come before them or either of them, as well as legislation

making suitable provision for the trial of such case or cases in such event, and also the desirability of general legislation conferring upon the supreme court power on appeal to review the facts in equity cases, and

“WHEREAS, I have reason to believe that work will be forthwith resumed in all the suspended operations aforesaid if an extraordinary session of the legislature is called to consider such legislation.”

I am advised that the calling of this session arose out of the fierce contentions of rival mining corporations in the state. During their legal controversies one or two of the judges were assailed with great bitterness in the courts and the press and upon the hustings, and the quarrel culminated in one of these corporations suspending its immense operations in the state, throwing many thousands of employees out of work at the commencement of winter. Upon the passage of the legislation called for in the governor's proclamation, these operations were resumed.

The first act passed makes it mandatory upon the Supreme Court, in proceedings of an equitable nature, to review all questions of fact arising upon the evidence presented in the record, whether presented by specifications of particulars or not, and determine the same.

The other act amends the law of Montana so as to provide for the disqualification of the district judge upon the affidavit of either party that he has reason to believe and does believe that he cannot have a fair and impartial hearing or trial by reason of the bias or prejudice of the judge, the affidavit to be made by any party to the action personally or by his attorney or agent at any time before the day appointed for the hearing or trial on any action, motion or proceeding, and upon the filing of the affidavit the judge is to be deprived of all authority to act further, except to order the change of venue or to call in another judge. Five judges can be disqualified for bias or prejudice by each party, plaintiff or defendant.

As there are only fifteen judges in the state, it will be seen that ten of them may be disqualified.

The constitutionality of this law was questioned, and decided in the affirmative by the Supreme Court of Montana in the case of the State *ex rel.* Anaconda Mining Co. *vs.* William Clancy, Judge, *et al.*, 77 Pacific Reporter, 312.

#### LOUISIANA.

In Louisiana the negotiable instruments law, which was fathered by this Association, has been passed. It is now the law of Arizona, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington and Wisconsin, twenty-five in all. The Louisiana lawyers congratulate themselves on the gradual adoption of this law by other states, for they claim that it is practically the commercial law of Louisiana as crystallized in its jurisprudence, the only exception being the abolition of the days of grace. The Louisianians regard the adoption of the law by the common law states as a tribute to the code of Louisiana.

An act was also passed to organize a commission to investigate the Torrens system of land registration and adapt the same to Louisiana titles.

An act was also passed, recommended by the Conference of Commissioners on Uniform State Laws, relating to the transfer and delivery of stock certificates of corporations.

The passage of these laws was accelerated by the fact that the chairman of the Louisiana Board of Commissioners on Uniform State Laws was a member of the legislature.

An act provided that the owner of real estate on which a manufacturing or industrial establishment is located may make the machinery and appliances used in such establishment immovable by recording a declaration to that effect.

A tax of three per cent. on direct inheritances and ten per cent. on collateral inheritances is levied for public school purposes, but these taxes are limited to property which has

escaped its just portion of taxes during the lifetime of the deceased owner.

A prohibitive license tax is levied on dealers in trading stamps; and on itinerant peddlers of stoves, lightning rods and clocks.

Birds (other than game birds) and their nests are protected under penalty, in the interest of agriculture.

Bonding and surety companies are required to deposit with the state treasurer a guaranty fund to insure compliance with contracts made in that state.

Fifteen days is fixed as the extreme limit for filing answers in cases, regardless of the distance of the defendant's residence from the court.

Electric street railways are required to equip their cars with screens or vestibules to protect motormen, from November 15th to March 15th of each year.

Municipalities of more than five thousand inhabitants are granted the right to construct and operate electric street railways.

A Department of Forestry is established and provision made for the preservation of the forests of the state.

All turf exchanges and pool rooms are prohibited under severe penalties.

It is made unlawful for any clerk or employee of any judge or court officer to practice law or to appear for another in any court proceeding.

A general militia law was enacted, bringing Louisiana in line with recent federal legislation on the subject.

Retail dealers in cities of more than 50,000 inhabitants are required to give their clerks one hour for luncheon.

Louisiana has submitted fifteen proposed amendments to her constitution. Among them is one making the justices of the Supreme Court elective, instead of appointive, as heretofore; another relating to the selection of the judges of the intermediate Court of Appeals, with jurisdiction from \$100 to \$2000. Another amendment exempts from all taxation for

ten years from completion all railroads constructed in the state prior to January 1, 1909. Another provides for the issuance of \$1,000,000 of state bonds for school house purposes. Another provides not less than \$75,000 nor more than \$150,000 per annum for pensions to Confederate veterans and their widows.

#### IOWA.

The regular session of the Iowa legislature passed some interesting acts.

An act provides that in every public department and on all public works honorably discharged soldiers, sailors and marines from the army and navy of the United States in the late Civil War, who are citizens and residents of the state and of good moral character and who possess the necessary qualifications, shall be entitled to preference in appointment, employment and promotion over other persons, and the person thus preferred shall not be disqualified on account of his age or by reason of any physical disability, provided such age or disability does not render him incompetent to perform properly the duties of the position applied for. A refusal to allow the preference provided for, or a reduction of his compensation intended to bring about his resignation or discharge, entitles such person to a right of action therefor in any court of competent jurisdiction for damages, and also a remedy by mandamus. No such person shall be removed from his position except for incompetency or misconduct shown after a hearing, with the right of such appointee to a review or writ of certiorari. The act, however, does not apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing power.

Another law provides for the erection of a monument on the site of the Confederate military prison at Andersonville, Georgia, and also for a commission of five to go there and locate it, in commemoration of the Iowa soldiers who were in prison and died there.

An act was passed providing for the election by the political parties of delegates to political conventions in counties having a population of 75,000 or more. Provision is made for the registration of voters preceding the primary elections, at which registration the voter is to register his party affiliation, and at the primary election only those so registered can vote for delegates of the political party with which he is affiliated. The primary elections of all the political parties shall be held on the same day. County committeemen are also to be elected at the primary election, and the county committees shall consist of one person from each voting precinct in the county who is a legal voter in that precinct. The primary election law applies to cities within the counties. The electors at the primary election have the right to instruct the delegates, and the delegates chosen and serving shall in the convention be considered as instructed to vote for, as long as good faith requires and use their best endeavors to secure the nomination of the persons for whom instructions have been given by the largest number of votes in the precinct wherein the delegates are chosen. No candidate of any political party which cast ten per cent. or more of the total vote at the preceding election can be placed upon the official ballot unless selected by a convention composed of delegates selected at the primary election. There are many provisions in the act looking to a fair expression of the registered voters of the respective parties as to the delegates to be sent to their conventions, and these provisions are supported by many penalties.

Another act known as the Juvenile Court Act, enlarges the powers of the district court so as to regulate and control dependent, neglected and delinquent children.

An act provided that no assignment of errors shall be required in any case at law or in equity now pending or hereafter docketed in the Supreme Court, leaving these matters to be covered by points or propositions in the printed arguments which are required to be filed under the practice of that state, and perhaps also (but of this I am not certain) reserving the



right to the Supreme Court to notice any points not insisted upon by counsel.

There is an act creating a state highway commission, showing that the good roads movement has taken hold there.

Another act provides that wages earned outside of the state by a non-resident of the state, and payable outside of the state, shall in all cases where the garnishing creditor is a non-resident of the state be exempt from attachment or garnishment, where the cause of action arises out of the state. It is made the duty of the garnishee in such cases to plead such exemption, unless the defendant shall be personally served with original notice in the state. The mischief which led to the passage of this act was doubtless a growing evil to employees of the railroad systems of that state being harassed by suits by money changers dealing in claims against them.

There is also an act prohibiting the docking of horses' tails.

In one act punishment is provided for the larceny of domestic fowls or poultry in the night-time. This would seem to indicate that a Southern industry had been transplanted to Northern soil.

A joint resolution was also passed as follows:

“WHEREAS, A large number of state legislatures have at various times adopted memorials and resolutions in favor of the election of United States senators by popular vote; and

“WHEREAS, The national house of representatives has on four separate occasions, within recent years, adopted resolutions in favor of this proposed change in the method of electing United States senators, which were not adopted by the Senate; and,

“WHEREAS, Article V of the Constitution of the United States provides that Congress, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments and believing there is a general desire on the part of the citizens of the State of Iowa that the United States senators should be elected by a direct vote of the people; therefore,

“*Be it resolved*, By the General Assembly of the State of Iowa:

“That the legislature of the State of Iowa favors the adoption of an amendment to the Constitution which shall provide for the election of United States senators by popular vote, and joins with other states of the union in respectfully requesting that a convention be called for the purpose of proposing an amendment to the Constitution of the United States as provided for in Article V of the said Constitution, which amendment shall provide for a change in the present method of electing United States senators, so that they can be chosen in each state by direct vote of the people.”

This would indicate that there is a sentiment among the people of Iowa to make an appeal to the people of the union, over the head of the Senate, for a change in the Constitution of the United States respecting the election of United States senators.

#### OHIO.

The very excellent pioneer act of 1902, requiring a system of uniform accounting throughout the state was amended so as to increase the efficiency of that statute.

The speed of automobiles in the business and closely built-up portion of any municipality is restricted to eight miles an hour; in other portions of such municipalities to fifteen miles an hour; and outside said municipalities to twenty miles an hour. All public bodies are forbidden to change the said speeds by ordinance. Persons using automobiles are required to bring them to a full stop when signaled by putting up of the hand by a person riding, leading or driving a horse or other animal. A person using an automobile is also required for the period from one hour after sunset to one hour before sunrise to exhibit a lamp or lamps showing a white light or lights for a reasonable distance in the direction toward which such automobile is proceeding and a red light or lights in the reverse direction. Automobiles are also required to be equipped with a brake and a suitable bell, horn or other signal.

A statute was passed entitled "An act to prevent loss of life in public houses and theaters."

By section 1, a person operating a theater is required to distribute to the audience a diagram of the aisles and all exits.

Section 2 of said act provides that every theater having a seating capacity of 750 or more shall be required to have a person stationed at each outside exit. Each exit is required to have painted thereon the word "exit" in letters of not less than six inches in length and three inches in breadth, the same to be illuminated either by electric light or gas, fed by independent wire or pipes. In case of a theater located in a municipality having no gas or electricity, then the illumination is required to be by non-explosive oil.

By section 3 said theaters are required to be equipped with an asbestos or a steel stage curtain overlapping twelve inches on both sides, having attached at the top and bottom iron gas piping of not less than one and a half inches inside diameter. All guide wires are required to be of steel not less than one-fourth inch in diameter. The proscenium wall is required to be of brick or other fire-proof material.

Section 4 imposes a penalty for obstructing the descent of the curtain by any wire, light reflector, scenery or other thing.

By section 5 it is made the duty of the mayor, chief of the fire department and building inspector to enforce the provisions of the statute.

The double liability of stockholders having been abolished by a constitutional amendment adopted in November, 1903, a statute was enacted for the purpose of fully carrying said constitutional amendment into effect.

All notices which by the law should be published in a newspaper by the trustee, assignee, executor, administrator, receiver or other court officer or party are required to be approved by the court or a clerk thereof.

The numerous special acts in force in reference to court stenographers were repealed and a uniform law governing court stenographers was adopted. In addition to their salary,

they are not permitted to charge in excess of eight cents per folio of 100 words.

The statutes against perjury and bribery were supplemented by providing that "whoever with intent to corrupt a witness or to influence him in respect to the testimony he is about to or may be called upon to give in an action or proceeding pending or about to be commenced, either before or after he is subpoenaed or sworn, offers, promises or gives to him or to anyone for him any valuable thing, shall be fined not more than \$500 and imprisoned not more than sixty days."

In a number of misdemeanors it is provided that if a witness shall incriminate himself he shall thereafter be discharged from prosecution or punishment for the misdemeanors to which he testified.

A statute was passed providing that when a person has not been heard of for such a length of time as to cause his heirs at law or next of kin to believe such person dead, the probate court is given power to appoint a trustee of such person's real and personal property.

By statute all state funds are required to be deposited in banks and trust companies designated by the State Board of Deposit. No depository is permitted to have on deposit more than its paid-in capital stock and in no event more than \$500,000. Every depository is required to deposit with the treasurer of the state United States government bonds, or bonds of the state, or county or municipal bonds, or surety company bonds, at not less than their value in an amount equal to the amount of money deposited. The rate of interest fixed is not less than two per cent. per annum and the security required is to insure the repayment of principal and interest. The treasurer is also permitted to designate two active depositories, interest being payable of not less than one per cent. per annum on daily balances. The treasurer, auditor and attorney general are constituted the Board of Deposit.

In primary elections an elector is forbidden to vote unless he had voted with the political party holding such primary

election at the last general election, unless he is a first voter. By statute it is further provided that a political party might by notice call its primary election to be held by regular officers of election. Such primary elections are then to be held under the general provisions of the law governing general elections. This statute puts primary elections under the same orderly provisions as general elections.

For many years in Ohio municipal elections were held in April, while general elections were held in November. The spring elections were abolished, so that all elections are required to be held in November. At the same time the General Assembly of Ohio adopted a joint resolution providing for submitting an amendment to the state constitution so that municipal elections shall be held in November of the odd years and national and state elections in November of the even years.

Numerous special acts governing elections were repealed and a law uniform throughout the state was enacted. It was substantially a re-enactment of the general statutes providing for the registration of electors and the Australian ballot.

A liberal local option statute was passed. It provides that whenever forty per cent. of the qualified electors of a residence district petition therefor, a special election shall be held for determining the question whether intoxicating liquors shall or shall not be sold within such residence district. The words "intoxicating liquors" are required to be construed to mean any distilled, malt, vinous or any intoxicating liquors by whatever name the same shall be known. The residence district is defined as "any contiguous territory containing not less than three hundred or more than two thousand electors." The statute further provides that such district shall not contain any block in which one-half or more of the foot frontage is occupied by buildings devoted to commercial, manufacturing, mercantile or other business purposes, not including saloons. In determining the foot frontage saloons are to be excluded and counted neither as business nor as residence property.

The judges of the trial courts in the various counties are required to designate one of their number as judge of the Juvenile Court. This court is given jurisdiction of children under sixteen years of age. Such powers are given this court as are assigned generally to juvenile courts.

The probate courts are prohibited from granting a marriage license where either of the parties is an habitual drunkard, epileptic, imbecile or insane or who at the time of the application for the license is under the influence of intoxicating liquors or narcotic drugs.

One of the most important statutes passed was entitled, "An act qualifying the risks to be deemed as assumed by employees." This statute provides as follows, to wit:

"In any action brought by an employee, or his legal representative, against his employer, to recover for personal injuries, when it shall appear that the injury was caused in whole or in part by the negligent omission of such employer to guard or protect his machinery or appliances or the premises or place where said employee was employed, in the manner required by any penal statute of the state or United States in force at the date of the passage of this act, the fact that such employee continued in said employment with knowledge of such omission shall not operate as a defense; and in such action, if the jury find for the plaintiff, it may award such damages not exceeding, for injuries resulting in death, the sum of \$5000, and for injuries not so resulting the sum of \$3000, as it may find proportioned to the pecuniary damages resulting from said injuries; but nothing herein shall affect the provisions of section 6135 of the Revised Statutes.

"Nothing herein contained shall be construed as affecting the defense of contributory negligence nor the admissibility of evidence competent to support such defense."

The governor is required to select his staff from the commissioned officers of the National Guard in active service of the grade below that of colonel.

A provision is made to pay militiamen twenty-five cents for attendance at drill for each regular weekly drill attended not to exceed forty-eight weeks in one year.

Owners of mines are required to keep at the mouth of drift, shaft or slope where more than ten men are employed a stretcher, woolen blanket and waterproof blanket. Mines generating fire damp are required to keep on hand linseed or olive oil, bandages and linen.

Maple syrup and maple syrup sugar were defined to be the unadulterated product produced by the evaporation of pure sap from the maple tree. The standard of weight of a gallon of maple syrup of two hundred and thirty-one cubic inches is fixed at eleven pounds. Any other substance or a maple syrup of a less weight are declared to be adulterations. The use of the word "maple" in conjunction with anything else but unadulterated maple syrup is made a misdemeanor.

Railroads are prohibited from employing as flagmen, hostler or assistant hostler any person who cannot read, write and speak the English language. The act, however, does not apply to flagmen at street crossings. Owners of railroads are prohibited from erecting or maintaining any mail crane or live stock chute nearer than eighteen inches to the nearest point of contact with the cab of the widest locomotive.

Street railroads are given the right of eminent domain.

The numerous special statutes governing school districts were repealed and a uniform code was adopted. It permits each school district to determine for itself the size and manner of electing the school board. The statute was the result of a bitter contest between those who advocated a small school board with its members elected at large and those in favor of a large school board, consisting of ward representatives. The elastic plan was adopted as a compromise. In many respects it is a mere re-enactment of the best features of the Ohio statutes which have been heretofore embodied in many special laws.

Bonds of public officials, executors, administrators, guardians and trustees in excess of \$2000 are required to be executed with a surety company as surety. Surety companies are prohibited from qualifying on bonds in excess of twenty per cent.

of their capital stock. Premiums are limited to an amount not exceeding one-half of one per cent. per annum or in case the bond is for double the amount of the liability, then one-fourth of one per cent. per annum. The premiums are to be payable respectively out of the public funds or trust funds. Persons, however, who are unable to obtain a bond from a surety company are permitted to give individual bonds. Surety companies executing bonds for public officials are prohibited from requiring or receiving collateral or other security from public officials.

A collateral inheritance tax being already on the statute books, a law imposing direct inheritance tax was enacted. The rate of taxation is two per cent. on all in excess of \$3000 exemption to each beneficiary. The constitutionality of this law has just been sustained by the Supreme Court.

A sweeping statute was passed prohibiting generally the use of trading stamps.

Another act provides that any person bitten or injured by a mad dog shall be entitled to his actual expenses of medical and surgical attendance, in a sum not exceeding \$500, to be paid out of the per capita tax on dogs.

From the organization of Ohio as a state in 1802 down to November, 1903, the governor of Ohio has never had the veto power. A constitutional amendment adopted at that time gave the governor the veto power. One of his early acts was to veto an appropriation of \$80,000 for a governor's residence.

A joint resolution was passed making the scarlet carnation, McKinley's favorite flower, the "State flower of Ohio."

#### KENTUCKY.

The more important acts passed at the last session of the General Assembly of Kentucky were the following, viz.:

A negotiable instrument act substantially similar to that adopted by the legislature of New York. The important differences between the New York act and the Kentucky act are as follows:



1st. The Kentucky act omits section 7 of the New York act, which provides that "in any case not provided for in this act the rules of the law merchant shall govern."

2d. The Kentucky act omits subsection 3 of section 24 of the New York act, the part omitted reading as follows: "Waives the benefit of any law intended for the advantage or protection of the obligor."

3d. Under the Kentucky act, when an agent signs the name of a party to a note, the agent must be duly authorized in writing. This difference from the New York act is material. In the New York act, section 38, "The authority of the agent may be established as in other cases of agency."

4th. Insufficient notice of dishonor of a negotiable instrument can only be supplemented and validated by a written communication, while in the New York act an insufficient written notice may be supplemented and validated by verbal communication.

Before the adoption of the negotiable instruments act by the General Assembly of Kentucky an ordinary promissory note, payable to order or bearer, and not negotiable at nor discounted by a national bank or an incorporated state bank, was not upon the footing of a bill of exchange and was subject in the hands of the holder thereof to the equities and defenses existing between the maker and payee.

By the old law in existence in Kentucky until the adoption of the negotiable instruments act, in order to charge a person other than the maker of the note, it was required that the holder of an ordinary promissory note should bring an action against the maker at the first term of court to which such an action could be brought, pursue said action with reasonable diligence, obtain judgment, cause execution to be issued thereon and prosecute the maker to insolvency before he could have recourse against an assignor of such a note.

An act provides for the erection of a state capitol in place of the old, insufficient buildings now used for that purpose and appropriating the sum of \$1,000,000 for the erection thereof.

The member of the General Council of this Association from that state suggests :

“The new capitol should be erected upon some one of the hills surrounding the city of Frankfort, from which beautiful views of the surrounding country can be obtained; but the act provides that the building shall be located upon the ground or lot now used, which is altogether insufficient for the purpose.”

An act creates a state school book commission and a county school book commission and provides for use in the public schools of the commonwealth a uniform series of text books and defines the duties and powers of the commission to fix maximum prices of said text books and to make preparations for carrying the act into effect and providing penalties for the violation of same.

By the terms of this act bidders are required to submit, with their bids, sample copies of the books which they propose to furnish, which the state school book commission sends to each county school book commission, and the selection is determined by the vote of the county school book commissions, a majority of the whole number of county school book commissions in the state being necessary for the selection of the books to be used.

An act to regulate elections requires the officers of registration to issue certificates of registration to each voter registering at the time he is registered, and no person who is required to register is permitted to vote at any election held in the state until he shall have presented to the election officers his certificate of registration.

I am told that a witty member of the Kentucky Bar has suggested that by the terms of this act registration certificates are placed upon the footing of negotiable instruments.

An act regulating the sales of stocks of merchandise in bulk, or a portion thereof, out of the regular course of business makes fraudulent and void, as against the creditors of the seller, a sale by a merchant engaged in business in the state of any portion of his stock or merchandise otherwise than in

the ordinary course of his trade, or a sale of an entire stock of merchandise in bulk unless the purchaser shall, at least five days before the consummation of the sale, in good faith, make inquiry of the seller as to the names and places of residence or business of all the creditors of the seller, and unless the purchaser, at least five days before the consummation of the sale, shall notify or use reasonable diligence to cause to be notified personally each of the seller's creditors. If the purchaser fail to give such notice, he shall hold the merchandise so purchased for the use and benefit of all the creditors of the seller and shall be responsible to them for the fair value of such part thereof as he, the purchaser, may have transferred or conveyed to others. Similar acts were passed in Georgia, and also by Congress applicable to the District of Columbia.

Similar acts have been recently held to be unconstitutional by Judge Wing, of the United States District Court for the Northern District of Ohio, by the Supreme Court of Ohio, and by the Supreme Court of Utah. In Massachusetts and Tennessee similar acts have been held to be constitutional.

The stealing of chickens, turkeys, ducks or other fowls of the value of two dollars or more is made punishable by confinement in the penitentiary for not less than one nor more than five years.

The intent of this act is to deprive some of the population of the state of valuable perquisites which they have enjoyed for many years.

Bribing, or the attempt to bribe, any member of either house of the General Assembly, or any judicial, executive or ministerial officer of the commonwealth of Kentucky, or any county or city executive, ministerial, judicial or legislative officer, after such member or officer shall have been elected and before or after such member or officer shall have been qualified or assumed office, or taken his seat, with intent to influence his vote or decision on any question, matter, cause or proceeding which may be at any time pending in either house of the General Assembly or before such judicial, execu-

tive or legislative officer or which may be pending before any committee of either house of the General Assembly, is made a felony, punishable with confinement in the state penitentiary for a period of not less than one nor more than five years. The taking or agreeing to take a bribe by any member of the General Assembly or other executive, judicial, ministerial or legislative officer of the commonwealth of Kentucky or of any county or city to do or omit to do any act in his official capacity works a forfeiture of office, disqualifies from the right of suffrage for ten years and is made punishable by confinement in the penitentiary for not less than one nor more than five years.

Vagrants are defined and vagrancy is made punishable by fine and imprisonment in a workhouse.

It is made unlawful for any county clerk or deputy county clerk to admit to record any deed of conveyance of any interest in real estate equal to or greater than a life estate, unless said deed shall plainly specify and refer to the next immediate source from which the grantor or grantors therein derived title to the said real estate or the interest conveyed therein.

If the source of title be a deed or other recorded writing, then the deed offered for record shall refer to such former deed or writing and give the office, book and page where recorded and the date thereof, if dated.

If the property or interest therein be obtained by inheritance or in any other way than by recorded instrument of writing, then the deed offered for record shall state clearly and accurately how and from whom the title thereto was obtained by the grantor or grantors.

If the title to such property or interest be obtained from two or more sources, then the deed offered for record is required to specify plainly and refer to each of said sources, and to show what part of said property or interest therein was obtained from each of said sources.

A failure to incorporate in a deed a reference to the source of title does not invalidate a deed lodged for record contrary to the provisions of the act, but any grantor who shall lodge for record, and any county court clerk or deputy county court clerk who shall receive from him to be lodged for record any deed contrary to the provisions of the act is made subject to a fine of not less than twenty-five dollars nor more than fifty dollars for each offense.

Telephone companies, or partnerships or individuals engaged in the construction and maintenance of telephones, are permitted to institute condemnation proceedings to obtain a right of way for their telephone lines.

White and colored persons are prohibited from attending the same school or college, and it is made unlawful for any person, corporation or association of persons to maintain or operate any college, school or institution where persons of the white and negro races are both received as pupils.

A white person attending a negro school, or a negro attending a school for white persons, is made subject to a fine of fifty dollars for each day he attends such institution or school.

Any person or corporation who shall operate or maintain a mixed college, school or institution is made subject to a fine of \$1000, and any person or corporation convicted of violating the provisions of the act is subject to a fine of \$100 for each day he or they may operate such school, college or institution after such conviction.

The same penalties are imposed upon an instructor teaching any school, college or institution where members of the two races are received as pupils for instruction.

Children between seven and fourteen years of age in first, second, third and fourth class towns and cities are required to attend school, unless physically or mentally unfit, or unless they have acquired the common school branches required by law.

Truant officers are provided for to enforce the provisions of the act. Upon complaint made by a truant officer before a

justice of the peace of the county in which the child lives, the parent, guardian or other person in charge of the child may be fined if he does not cause his child to attend school in a sum not less than five dollars nor more than twenty dollars for the first offense, nor less than ten dollars nor more than fifty dollars for the second and every subsequent offense, and costs of suit. This is a long step in the direction of compulsory education.

County surveyors are required to keep a record of plats and explanatory notes of all surveys made by them or their deputies.

No survey or resurvey of real estate made by any person, excepting the county surveyor or his deputy, shall be considered as legal testimony in any court of this state, unless such surveys are made by mutual consent, reduced to writing and signed by the parties and recorded in the county surveyor's office, or made by order of the court.

No person is permitted to operate a motor vehicle on a public highway at a rate of speed greater than is reasonable and proper at the different places, having regard to the traffic and use of the highway and its condition, or so as to endanger the life or limb of any person, or in any event at a greater rate than fifteen miles an hour.

Upon approaching a crossing or intersecting public highways, or a bridge, or a sharp curve, or a steep descent, and also traversing such crossing, bridge, curve or descent, the person operating a motor vehicle shall have it under control, and operate it at a rate of speed no greater than six miles an hour, and in no event greater than is reasonable and proper, having regard to the traffic then on such highway and the safety of the public.

Motor vehicles are required to give warnings of their approach, by proper device, and to reduce their speed to prevent the frightening of horses or other animals. Upon a signal from a person riding or driving a restive horse or horses, motor vehicles are required to come to a stop, and to remain station-

ary as long as may be reasonable, to allow such horses or animals to pass, and to prevent accidents and insure the safety of persons, vehicles and animals.

An amendment to the Kentucky constitution has been submitted, changing the present constitution by abolishing the secret ballot and providing that all elections by the people shall be *viva voce* and made matter of public record by the officers of election according to the direction of the voter.

#### MISSISSIPPI.

Among the important acts passed in Mississippi were the following:

An act requiring life insurance companies to deliver with the policy a copy of the application, and provides that in default of so doing the insurance company shall not be permitted in any court to deny the truth of the statements in the application; and the act further provides that a misstatement touching the age of the insured in the application shall not invalidate the policy, but that the beneficiary may recover such an amount of insurance as the premiums paid would have purchased for the insured at his actual age, reckoning according to the rate tables of the company.

An act creating a school text book commission and providing for use in public schools of a uniform system or series of text books.

An act amending Lord Campbell's act so that illegitimate children can sue for the wrongful death of their mother and the mother of a bastard may sue for the wrongful death of her illegitimate child.

The first Monday in September, Labor Day, is made a public holiday.

An act was passed making a warehouse receipt in the hands of a bona fide holder for value conclusive evidence that the goods were received as stated in the receipt.

Also a "Jim Crow" law applicable to street railways.

Another act requires railroads to settle all claims for lost or damaged freight, the claim being not less than fifty dollars, within sixty days, and where the freight is handled by two or more roads within ninety days from the filing of written notice by the claimant with the railroad agent at the point of destination, adding a penalty of twenty-five per cent. for failure to settle within the time specified.

An act requires manufacturers and dealers in commercial fertilizers offered for sale in this state to brand the fertilizers in such manner as to designate the constituent elements of available plant food contained therein.

An act abolishes the imparlance terms in the circuit courts and makes all suits triable at the first term after institution, provided summons was served on the defendant personally within thirty days before the meeting of the court.

An act provides for a commission to prepare a new code and report the same to the next session of the legislature.

A stringent vagrancy law was passed, much like the Kentucky law and the Georgia law to be hereafter noticed.

Mississippi submitted an amendment to her constitution abolishing the requirement of the present constitution for taking the census of the state every ten years, and also confirmed by acts amendments which had been carried at the previous elections relating to the apportionment of senators and representatives and requiring the poll tax to be retained in the counties where the same is collected and not distributed among the several counties and school districts.

#### GEORGIA.

Some of the legislation of Georgia is especially interesting.

A law was passed amending the definition of robbery as contained in the Georgia penal code. Prior to the amending act, robbery was defined to be "the wrongful, fraudulent and violent taking of money, goods or chattels from the person of another by force or intimidation without the consent of the owner." The amendment added the following to this defini-



tion: "or the sudden snatching, taking or carrying away any money, goods, chattels or anything of value from the owner or person in possession or control thereof without the consent of the owner or person in possession or control thereof." This amendment was obviously made to meet the cases of pick-pockets and street thieves and was brought about by a decision of the Supreme Court of Georgia, which held such cases not to come within the definition of robbery.

A very important law was passed with reference to vagrancy and its definition and punishment which deserves more than a passing glance. Under this law vagrants are defined as follows:

"1. Persons wandering or strolling about in idleness who are able to work and have no property to support them. 2. Persons leading an idle, immoral or profligate life who have no property to support them and who are able to work and do not work. 3. All persons able to work having no property to support them and who have no visible or known means of a fair, honest and reputable livelihood. The term 'visible and known means of a fair, honest and reputable livelihood,' as used in this section, shall be construed to mean reasonably continuous employment at some lawful occupation for reasonable compensation, or a fixed and regular income from property or other investment, which income is sufficient for the support and maintenance of such vagrant. 4. Persons having a fixed abode who have no visible property to support them and who live by stealing or by trading or bartering stolen property. 5. Professional gamblers living in idleness. 6. All able-bodied persons who are found begging for a living or who quit their houses and leave their wives and children without the means of subsistence. 7. All persons who are able to work and who do not work, but hire out their minor children and live upon their wages, shall be deemed and considered vagrants. 8. All persons over sixteen and under twenty-one years of age able to work and who do not work, and have no property to support them, and have not some known and visible means of a fair, honest and reputable livelihood, and whose parents are unable to support them, and who are not in attendance upon some educational institute."

The act then proceeds to provide the machinery for enforcing the law and makes it the duty of sheriffs, constables, police and town marshals to give information under oath to any officer authorized to issue criminal warrants of all vagrants within their knowledge. The penalty upon conviction is that the vagrant shall be bound in sufficient security, in the discretion of the court, for his future industry and good conduct for one year. Upon the vagrant's refusal or failure to give security, he shall be punished "as for a misdemeanor." The penalty for a misdemeanor in Georgia is a fine not exceeding \$1000, confinement upon the chain gang or public works not exceeding twelve months or imprisonment in the common jail not exceeding six months, either or all in the discretion of the court. The act ends with a provision that it shall be a sufficient defense to the charge of vagrancy that the defendant has made a bona fide effort to obtain employment at reasonable prices for his labor and has failed to obtain the same.

I am informed that this law was demanded by the agricultural interests of the state, which have suffered for some years past from the dearth of labor, due in great part, as it is claimed, to the idleness of the negro population throughout the state. This act has served as the model for several similar laws passed by a number of the adjoining Southern states.

A law was passed creating a state school book commission and requiring the commission to provide in the public schools of the state a uniform series of text books and providing elaborately for the duties and powers of the commission.

An act was passed to protect the officers and employees of the Georgia penitentiary at the various convict camps throughout the state, which provides that no person shall be allowed to come inside of the guard lines at the various camps with a gun, pistol or any other weapon or any intoxicating liquors, and makes it unlawful for any person at such camps to trade or traffic with any convict or to buy from or sell to any convict any article without the consent of the warden in charge, and gives the wardens the right to establish guard lines, and it

further makes it unlawful for any person to linger or stand around within the guard lines, and makes the violation of these various provisions a misdemeanor.

A law was passed creating a board of health to consist of twelve members, a majority thereof to be physicians. The duties, jurisdiction and powers of the board are elaborately defined, and in a general way the powers of the board may be said to be a general supervision of all matters relating to the preservation of the lives and health of the people of the state. Supreme authority in matters of quarantine is given to the board. The collection of statistics upon the subject of contagious and infectious diseases and the like is made the duty of the board, and all local boards of health are practically put under the supervision of the State Board of Health.

A law was passed repealing the previous law which allowed a trial by jury of a person alleged to have become insane after conviction of a capital offense. The old law provided that where a convict under sentence of death should become insane after such sentence, the judge of the Superior Court in which the original trial was had shall, upon the affidavit of a practicing physician as to his insanity, summon a jury and try the question of present insanity, and upon a finding by the jury that the convict is insane the sentence of death shall be suspended and the convict confined in an insane asylum. This law was repealed *in toto*, and in lieu thereof it was provided "that upon satisfactory evidence being offered to the governor of this state that the person convicted of a capital offense has become insane subsequent to his conviction the governor may, within his discretion, have such person examined by such expert physicians as the governor may choose, and said physicians shall report to the governor the result of their investigation, and the governor may, if he shall determine that the person convicted has become insane, have the power of committing him to the state sanitarium until his sanity shall have been restored, as determined by laws now in force. The cost of the investigation shall be paid by the governor out of the contingent fund."

Another law was passed, obviously to prevent the service of professional jurors, which provides that any juror who has served as a grand or traverse juror at any term of any court shall be ineligible as juror at the next succeeding term of the court. Inasmuch as the terms of the courts there last six months, this prohibits a juror from serving more than once in any year.

A law was passed abolishing "days of grace," and making all obligations due upon the day named in the contract.

Another very interesting law, similar to that in Kentucky and the District of Columbia, was passed regulating the sale of stocks of goods, wares and merchandise in bulk.

Another act was passed, which has given rise to considerable litigation in the rural counties of the state. It recognizes the principle of initiative on the part of the people directly affected. It makes it unlawful, by one sweeping enactment, "for any person or persons to permit any hog or hogs to run at large beyond the limits of his own land or of the land of which he is in control." This law is to go into effect when as many as 150 freeholders shall petition therefor. Upon such petition, an election shall be held in which all the voters of the county are allowed to participate. Those who favor the adoption of the act shall have written or printed upon their ballots the words, "Against hogs at large," and those who are opposed thereto shall have written or printed upon their ballots, "For hogs at large." The law then provides that in the event a majority of the votes are cast "Against hogs at large," the act shall become operative, and "that if any hog shall commit trespass or damage, or be found at large upon the premises of any other person than the owner thereof, it shall be lawful for such owner of such land to impound such hog until such owner of such hog shall make such satisfaction for the damage committed by such hog, including cost and expenses."

An elaborate bird law was passed, which for the first time in its history protects in Georgia the nests and eggs of any

wild bird not a game bird, and which prohibits the killing or trapping of any wild bird other than a game bird. It allows the killing of game birds only between November and March, and defines game birds as follows:

“Swans, geese, brant, river and sea ducks, rails, coots, mud-hens and gallinules, shore birds, plovers, surf birds, snipe, woodcock, sandpipers, tattlers and curlews, wild turkeys, grouse, prairie chickens, pheasants, doves, partridges and quail.”

To anyone who, with gun in hand, has ranged along the coast country these names revive pleasing memories.

The act further provides that it shall not be unlawful to kill the following birds: The English or European house sparrow, great horned owl, sharp-shinned hawk, commonly known as the little blue darter or blue tail, cooper's hawk, known as the big blue darter or blue tail, crow, lark, crow blackbird, jackdaw and rice bird.

Another law provides for the appointment in each county of a game warden, whose duty it shall be to see to the enforcement of the game laws.

#### MARYLAND.

The legislation of the session in this state was impeded by the senatorial contest and the interruption by the disastrous fire in Baltimore. Six hundred and ninety-two acts were passed.

The earliest laws approved were naturally those arising out of the Baltimore conflagration of February 7, 1904. Special business holidays were instantly created for Baltimore city from February 8th to February 15th, inclusive, with power to the governor to extend the period, and the time to plead in all cases at common law in the same city was summarily extended by the legislature to April 15th.

An act creates a Burnt District Commission for Baltimore city with extensive powers of condemnation of land for public uses. Under the authority given, this commission has widened

ten or twelve streets, acquired land for a market space and a court house plaza, and all the wharf property, including several blocks adjacent, for a new system of docks to be owned by the city.

An act provides for a state registration of nurses, and another establishes a state board of barber examiners. The latter law marks a growing tendency to encourage state boards of all conceivable kinds.

Judgments of justices of the peace are to be affirmed by circuit courts where the appellants are not ready for trial.

The mother of an infant is authorized to file a petition for the change of its name, although the father is living and a resident of Maryland.

Replevin bonds are no longer to be given to the plaintiff, but to the state for the use of the parties in interest.

In suits before magistrates, as well as in the courts, the existence of a corporation or partnership or the representative character of a party must be denied under oath before the hearing; otherwise it will be taken as admitted.

Mortgagees of lands may be made parties to suits instituted for sale for purposes of partition. Heretofore it has been possible to bring into such proceedings mortgagees of undivided interests only. This new law is of great importance as affecting both right and remedy.

Courts of chancery may now decree the execution of mortgages so as to bind unborn parties. The law in this respect has been made to conform to that prevailing since 1868 in reference to sales and leases.

Exemptions from execution have been further extended. One hundred dollars in property, whether the same consists of money, land or goods, as well as all money payable in the nature of insurance, benefit or relief in the contingency or event of sickness, accident, hurt or death of any person, is now protected against seizure on *fiери facias*.

A delay in the late governor's appointment prevented an early report by an able commission ultimately selected to revise

the corporation laws. The profession and the state must, in consequence, tolerate for a further period of at least two years a chaotic and confusing condition of these statutes now prevailing.

Life insurance, accident insurance, safe deposit, trust and fidelity companies are authorized to call in or cancel the whole or part of their capital stock, and to issue other stock in lieu thereof.

The future individual liability of stockholders in trust and certain other joint stock companies is defined by a law which became operative on March 25th without the governor's approval. It is a single liability and is constituted an asset of the corporation, enforceable alone by the receiver thereof. Existing rights are, however, saved by this particular amendment, and a second act, approved April 12th, provides an exclusive remedy against stockholders for all rights existing under the law as it stood before March 25, 1904, not affected by the enactment of that date. The remedy is by bill in equity in the nature of a creditor's bill, filed by one or more creditors. This measure provides for the abatement of all pending actions at law, instituted since January 1, 1903, by individual creditors and the payment of the costs thereof out of the common fund produced by the equity proceeding.

The dangers of wood alcohol are reduced by legislation which forbids its use.

Fines imposed for the desertion of wife and minor child can now be ordered by the court to be paid in whole or in part to the wife. A husband arrested for desertion may be released for one year on giving recognizance to pay a weekly sum to the wife for her support. This provision is also operative before conviction with the consent of the traverser.

The period of possible commitment of female minors to juvenile institutions has been extended from eighteen to twenty-one years of age.

An infant without proper care may be committed to such an institution under an act which contains definitions and prescribes methods.

Conservators of the peace of other states, railway special agents and persons carrying weapons as a reasonable precaution against apprehended danger, are exempted from the law in reference to concealed weapons.

The malicious and wrongful tapping of water mains has been added to the long category of statutory offenses.

Trading stamps, unless redeemable in money, were so offensive to the legislative conscience as to receive the condemnation of two acts of assembly.

The brighter side of penal legislation is presented by the emendation of the law concerning the juvenile court.

Jurisdiction is ceded to the United States over territory which has been heretofore or may be hereafter acquired by the government for public purposes, but civil process may be served by state officers in such territory.

After June 1, 1904, leases for terms not exceeding seven years will terminate whenever the improvements on the premises become untenable by reason of fire or unavoidable accident, and all liability for rent thereunder will cease upon payment of apportioned rent.

Impediments of coverture and imprisonment have been removed from limitations on bonds, and the payment of interest upon a single bill or other specialty now suspends the period of limitation for three years thereafter.

The mortgage tax has been repealed as to Baltimore city and fourteen counties of the state. Elsewhere it will be hereafter collected for the benefit of the counties themselves, and not for that of the state.

The collateral inheritance tax is not enforceable for an indefinite period. The security of titles and the peace of mind of conveyancers are increased by the establishment of a limitation of four years for its collection.

A notable change has been effected in the publication of the Maryland reports and the codification of the general statutes of the state. The new law creates a salaried office of State Reporter and Codifier, provides for advertisement for the pub-



lication of the reports and the award thereof to the most responsible bidder furnishing the best terms to the public. The publisher must agree to sell the advance sheets at a price fifty cents less per volume than the price exacted for the bound volume itself. The copyright in the volumes subsequent to 97 Md. will belong to the state. In consequence of this change the price of the future bound volumes of the Maryland reports will be \$1.75 instead of \$4.00.

Immediately after the session of the general assembly of 1910, and decennially thereafter, the Reporter and Codifier is to prepare a code of public general laws, which is to be submitted to a commission of three persons to be appointed by the Court of Appeals, and the Reporter and Codifier is also, from time to time in the future, to codify the public local laws of the state.

A "Jim Crow" law was enacted applying to steam railroads and steamboats. For the benefit for those not familiar with the legislative lingo, I would say that the name of "Jim Crow," the hero of an old negro song very popular in the days before the war, has been applied to the legislation of recent years separating the whites and negroes in railroad trains.

An act of practical and personal interest to lawyers and judges was passed, providing for the pensioning of judges. It reads as follows:

"Every judge of the Circuit Courts of the counties, Supreme Bench of Baltimore city, or the Court of Appeals, who shall attain the age of seventy years while in office, after having served the ten preceding consecutive years, and every judge of any of said courts who shall have served upon the bench fifteen consecutive years, whether such service be before or after the passage of this act, and who shall have reached the age of seventy years, and every person who has heretofore been elected, and has served as judge of any of said courts, and is now no longer in office, and has attained the age of seventy years, or if not now seventy years of age, when he shall attain said age, shall be entitled to a salary of \$2400 per annum, payable in quarterly installments as other judges' salaries are now paid."

This measure emanated from the Maryland State Bar Association, through whose influence and efforts it became a law. Mr. George Whitelock, President of the Maryland State Bar Association, in his address to that association this year, stated that a similar pension bill had just failed in the New York legislature, but regulations resembling those of Maryland are now effective in Connecticut, Massachusetts and Rhode Island. In Connecticut the salary of a judge of the Supreme Court is \$6500 per annum; at the age of seventy these judges retire, but they are appointed state referees, with an allowance of \$2000 per annum. In Massachusetts a judge of the Supreme Court receives \$9000 per annum. Resigning at seventy, he is paid three-fourths of his former salary, or say, \$6750 per annum. The Supreme Court judges of Rhode Island receive each \$5500 per annum. They are entitled to the same allowance after their retirement. Of course, we are all familiar with the federal law continuing the salaries of judges, where they have served ten years and reached the age of seventy, during the residue of their natural lives.

Two constitutional amendments passed both houses of the General Assembly by the requisite majority of three-fifths, but the governor refused to sign either of them, and the question exists whether his approval is essential. One of the amendments deals with the suffrage question. The qualifications of voters are: ability to read any section of the state constitution, or to understand the same when read and give a reasonable explanation of it; or the right under the law of any state in the union to vote on January 1, 1869, or prior thereto, or lineal descent from any person so entitled to vote. The other amendment authorizes the expenditure of not more than \$200,000 annually in the construction and maintenance of public highways, and shows that Maryland is in line with other progressive states upon the question of good roads.

## MASSACHUSETTS.

Massachusetts, as usual, has been conservative in her legislation, but has dealt with many minute things, among others:

The keeping of bloodhounds is prohibited, except an English bloodhound of pure blood whose pedigree is recorded or would be entitled to record in the English bloodhound herd book, unless such dog is kept solely for exhibition, in which case he shall be kept securely enclosed or chained, and not allowed at large unless securely muzzled.

Cities and towns are authorized to contribute money, material or labor toward the cost of state highways within their limits.

Towns may appropriate not more than \$500 for band concerts.

The evening law school of the Boston Young Men's Christian Association is incorporated, and authorized to grant the degree of bachelor of law upon completion of four years course. Among the incorporators are Dean Ames, of Harvard Law School; Samuel C. Bennett, formerly Dean of Boston University Law School, and ex-Judge Dunbar, all of whom are members of the American Bar Association. The personnel of these incorporators would seem to settle the question, about which there has been some difference of opinion, that night law schools are a necessity of the times.

Hospital ambulances are given the same right of way as that of fire engines and police wagons in cities and towns.

The public performance or representation of an unpublished or undedicated dramatic or musical composition, without the consent of the proprietor and with notice that such composition is unpublished and undedicated, is made a misdemeanor punishable by fine or imprisonment or both.

It is exacted that in all trials in inferior courts male and female prisoners shall not be placed at the same time in the same dock, unless they are complained of jointly; and persons committed to any workhouse or almshouse for vagrancy,

drunkenness, petit larceny or as night walkers shall be confined in separate quarters, apart from the pauper inmates.

The word "noon" occurring in the Massachusetts standard fire insurance policy shall be construed to be the noon of standard time of the place where the insured property is situated.

The Bertillon system of measurements of criminals for purposes of identification is extended to prisoners who are under sentence as tramps or vagrants.

In cities of over 50,000 inhabitants cheap lodging houses (twenty-five cents or less per day) accommodating ten or more persons are declared public lodging houses, requiring a license from the police department and subject to rigid inspection by the building, health and police departments. Every such place must keep a registry of patrons with time of arrival and departure.

The authority of the railroad commissioners is extended to embrace steamship companies serving as common carriers between two or more parts of the commonwealth throughout the year.

The act of 1902 relative to the powers of the board of conciliation and arbitration is amended.

This state guards her own by requiring that in the employment of mechanics and laborers in the construction of public works by the commonwealth or counties or cities or towns preference shall be given to citizens of the commonwealth, and if they cannot be had in sufficient numbers to citizens of the United States.

Selectmen of towns which accept the act by two-thirds vote are authorized to retire and pension certain members of the police and fire departments. Such persons shall receive one-half pay and be subject to temporary duty in emergency, when they shall have full pay.

It is provided that employees of manufacturing, mercantile and mechanical establishments entitled to vote shall not be employed on election days during the period of two hours after the opening of the polls.

The registration of the insignia, ribbons, badges, rosettes and emblems of any society, association or labor union is authorized and the wearing of them by persons not members is prohibited under penalty of fine or imprisonment.

Giving or promising to an employee any gift or gratuity with intent to influence his action in reference to his employer's business is made a criminal offense; in other words, "graft" is prohibited.

The State Board of Bar Examiners shall hereafter receive their compensation and expenses from the fees of petitioners for admission, which fees are fixed at the sum of fifteen dollars, and a citizen of another state and an alien who has made primary declaration shall be entitled to admission to practice if found qualified, whether man or woman.

Street railways are authorized to act as common carriers of baggage and freight upon such part of the railways and to such extent in any city or town as may be approved by the board of aldermen of cities or selectmen of towns, subject, however, to the certificate of the railroad commissioners that public necessity or convenience so require.

An excise tax of three per cent. is imposed upon the gross receipts from the sale of goods for which trading stamps are given.

An act creates the office of State Forester, who shall establish a nursery for the propagation of forest tree seedlings at the Agricultural College and distribute seeds and seedlings to land owners.

The expenditure of \$1000 by the Board of Commissioners for the promotion of uniformity of legislation in the United States is authorized.

A company for the purpose of generating and distributing music electrically is incorporated.

Another act provides for the licensing of theaters and public halls by municipal authorities and for the inspection of them in regard to structural condition, liability to fire, arrangement of exits and other safety provisions.

The provisions of the statutes relative to caucuses of political parties are applied to their caucuses held for the choice of delegates to conventions to elect delegates to national conventions.

An act provides for the payment to veterans of the Civil War, honorably discharged, who served to the credit of Massachusetts \$125 each. (This act was vetoed by the governor and afterwards received a two-thirds vote of members present of the House of Representatives and of the Senate. The attorney general, however, gave an opinion to the effect that the act has not the force of law because it did not receive a two-thirds vote of the whole membership of the House, and the governor requested the opinion of the Supreme Court on this point and as to its constitutionality, and the court has delivered an opinion against its constitutionality.)

#### NEW JERSEY.

New Jersey makes it a misdemeanor to mutilate the flag of the United States or the flag of the state or to cause to be placed thereon any inscription or advertisement. This looks like a parting of the ways of that state from commercialism.

The improvement of the condition of tenement houses is provided for and a board of tenement house supervision established.

An act was passed regulating the employment of children in factories and establishing a department for the enforcement of the act. It provides that no child under the age of fourteen years shall be permitted to work in any factory and prescribes numerous regulations for the protection of operatives.

The act for the regulation and incorporation of insurance companies was amended by providing that when by the laws of any other state or foreign country any taxes or other imposition in excess of those imposed by the laws of this state upon insurance companies are imposed upon insurance companies of this state doing business in such other state or country, then the same impositions shall be imposed by this state; and when the insurance commission of another state or country shall

refuse to accept as conclusive the certificate of the insurance commissioner of this state, then this state may retaliate by refusing to accept the certificate of such other state; and if license to transact business in such other state be refused to any company of this state, then license to transact business in this state shall be refused to companies of such other state. This act is evidently a step in the direction of enforcing comity of corporations between the states.

It is provided that no deed or other instrument, except deeds or instruments made by corporations, shall be void for lack of seal, thus abolishing private seals.

It is made a misdemeanor for any person to marry one who has been confined in any public asylum or institution as an epileptic or insane or feeble-minded patient unless two physicians shall certify that such a one is completely cured.

The act concerning corporations is amended and directors of corporations are made personally liable where they have declared dividends otherwise than from the surplus or net profits of the business.

A penalty is prescribed for overcharging by the carrier, ticket scalping is made a misdemeanor, the redemption of unused tickets is made compulsory and the method of procedure for the sale of unclaimed freight is prescribed.

#### NEW YORK.

An act compelling the registration of motor vehicles, facilitating their identification and regulating the use of public highways by such vehicles was passed. The maximum speed permitted on a closely built up highway is ten miles an hour. Another provision directs the chauffeur in case a horse appears badly frightened to cause the vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others.

An amendment to the negotiable instruments law is as follows:

"No bank shall be liable to a depositor for the payment by it of a forged or raised check unless within one year after the return to the depositor of the voucher of such payment such depositor shall notify the bank that the check so paid was forged or raised."

The right to do business in the state is denied to any foreign corporation not a moneyed or insurance corporation with the word "trust," "bank," "banking," "insurance," etc., as a part of its name.

And another act makes the use of these words under such circumstances a misdemeanor.

No foreign corporation is to be allowed to exercise within the state the powers of a bank or trust company. New York keeps some of the good things for her own corporations.

The definition of usury as a crime is apparently much limited. Under a new statute usury is not a crime unless security is taken upon household furniture, sewing machines, plate or silverware in actual use, wearing apparel or jewelry or unless a pretended purchase of such property is made.

The publication in a newspaper or circular of false representations concerning merchandise or the possession of prizes conferred on account of such merchandise or "the motive or purpose of a sale intended to give the appearance of an offer advantageous to the purchaser which is untrue or calculated to deceive" is made a misdemeanor.

An amendment to the Code of Civil Procedure gives the appellate division of each department power to provide for the classification for the purposes of trial of actions placed upon the calendars and for the making up of two or more calendars within such classification.

Where a wife has been successful in an action for absolute divorce and the final decree grants her alimony, her remarriage gives the defendant an absolute right to the discontinuance of the alimony.

An important act bearing on the state system of education was passed. The office of Superintendent of Public Instruction



is abolished and in its place there is created the office of Commissioner of Education, who is to be chosen for the first six years by the legislature, and after that by the Board of Regents of the University of the State of New York. He is at all times removable by the board. The number of regents is reduced from nineteen to eleven. The act takes the power of supervision over the elementary and secondary schools from the Board of Regents, and gives it to the Commissioner of Education, who is also given power to create departments and to appoint the heads of departments.

An act not applying to cities over 50,000 population provides that the commissioner of education shall not approve any plans for the erection of or addition to a school house unless the same shall provide at least fifteen square feet of floor space and two hundred cubic feet of air space for each pupil to be accommodated in each study or recitation room therein. Provision must also be made for supplying at least thirty feet of pure air every minute per pupil.

The disability of a physician to disclose as a witness information acquired in attending a patient in a professional capacity is extended to a professional or registered nurse.

An act passed mainly through the efforts of District Attorney Jerome, regulates a witness's privilege in a proceeding for violation of the laws against gambling. As the law stood, no person was excused from testifying in any such proceeding upon the ground that his testimony might tend to convict him of a crime. It was also provided that no testimony so given should be received against him upon any criminal investigation or proceeding. The amendment provides in addition that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify. The amendment was made necessary by the decision of the Court of Appeals in *People ex rel. Lewisohn vs. O'Brien*, 176 N. Y. 253.

Lenders of money on salaries of employees are required to file with the employer a copy of the agreement or assignment

under which their claim is made within three days after the execution of the agreement or assignment. If such a copy is not filed within the time specified, the lender acquires no right to collect or attach the salary while in the possession or control of the employer and can maintain no action against the employer.

An act was passed regulating the keeping of employment agencies in cities of over 50,000 population, with provisions for the protection of applicants for employment and the prevention and punishment of the use of such agencies for immoral purposes.

It is made a misdemeanor for any person to have in his possession a counterfeit or imitation of a union label.

An amendment of the labor law in relation to tenement made articles makes more stringent the requirements for obtaining a license to engage in any form of manufacture in a tenement house. Provision is made for a sanitary inspection of such premises in order to guard against the presence of contagious disease.

It is made a misdemeanor to bribe or attempt to bribe the representative of a labor organization.

An amendment to the military code adds a new kind of a discharge from the state militia, namely, a discharge without honor at the discretion of the officer issuing the same, in all cases where a dishonorable discharge may be issued.

It is made necessary before any person can become a licensed pharmacist to produce the diploma of a pharmacy school maintaining a proper standard, or the certificate of the board of pharmacy of another state.

An action commenced by a father to recover damages for the seduction of his minor daughter does not abate by his death, but survives to the mother.

The practice formerly prevailing in the state of submitting to a court or referee requests to find, and taking exceptions to a refusal to find any request thus submitted, is revived.

Real property is made to descend to the grandparents of a decedent who dies without leaving lineal descendants, father, mother, brothers or sisters, or their descendants, or brothers and sisters of father or mother or their descendants. The inheritance descends to the parents of the parent from whom the inheritance came to the intestate, and if from neither, then is divided equally among all living grandparents.

A board of alienists for the examination of insane, idiotic and epileptic immigrants is created, to be composed of three reputable and experienced physicians. They are required to examine all immigrants coming into this country at the port of New York for the purpose of ascertaining whether any of them be insane, idiotic, imbecile or epileptic, and to notify the proper authorities of the United States of such immigrants as are found to be so afflicted and to arrange for their deportation.

A board of statutory consolidation is created. The duty of the board is to direct and control the revision, simplification, arrangement and consolidation of the statutes of the state.

A permanent commission, to be known as the River Improvement Commission, is created, for the regulation of the flow of water courses, with power to improve water courses and to condemn land if necessary.

#### RHODE ISLAND.

Rhode Island gives to any person suffering injury to his person, reputation or estate, by reason of the commission of any crime or offense, the right to bring an action for damages without waiting for criminal prosecution, and provides that if any person is guilty of larceny he shall be liable to the owner for twice the value of the article stolen, or in case of restoration that he shall be liable for the value thereof only.

The building laws are amended, elaborately providing safeguards against fire in theaters.

An annual firemen's relief fund is provided, to be paid out of money received from taxes on fire insurance companies doing business in the state, to be paid to persons injured while doing service as firemen, or if killed, to their widows and children, and if none, to their next of kin dependent on them for support.

It is required that every foundry in the state employing ten or more men shall provide suitable toilet rooms, heated and ventilated, for use of its employees. This act shows the increasing disposition of the state to look out for the welfare of the working classes, but it is difficult to see any reason why its provisions should be limited to foundries.

The State Board of Agriculture is authorized to appoint a state nursery inspector and to provide for the protection of nursery stock from injurious insects and diseases. This act was made necessary on account of the spread of the San Jose scale.

Changes are made in the laws relative to education which shows the growing disposition toward consolidation and centralization of the educational affairs of her school districts.

#### SOUTH CAROLINA.

South Carolina has shown her revived confidence in the federal government by so broadening her laws relating to eminent domain as to authorize the United States by proceeding in the state courts to acquire lands needed for the "public uses" of the United States.

An act was passed encouraging the establishment of libraries in the public schools of the rural districts.

A Department of Agriculture, Commerce and Immigration is established, providing for the appointment and compensation of a commissioner.

Foreign corporations are given the right to locate and do business in the state in like manner and with like powers as corporations of a like kind and class created under her own laws, subject to certain terms and conditions not at all prohibitive or unduly onerous.

It is made a misdemeanor wilfully to withdraw or cause to be withdrawn and appropriated the electric current from the wires of any person or company producing or furnishing the same.

The jurisdiction of the state railroad commissioners is extended over all telephone lines, stations and exchanges and over all persons, firms and corporations owning or operating any telephone line, station or exchange for the transmission of intelligence for hire.

Railroad companies are practically exempted from the operation of the earlier statutes which made void mortgages of corporations not providing for all pre-existing bonds, debts and liabilities and limiting the liens of mortgages to twenty years unless some memorandum of payment or acknowledgment was recorded upon the face of the record of the mortgage.

An act establishes a state board of examiners for the regulation of the practice of medicine, and the false marking, branding, stamping or labeling of food products, whether mixed, manufactured or unmanufactured, is prohibited.

Another act provides against delays in the transportation of freight by railroads in the state and prescribes times respectively when shipments must be carried and delivered to points within certain distances from the point of shipment.

Constitutional amendments have been submitted: (1) providing for biennial sessions of the General Assembly; (2) permitting the General Assembly to enact local and special laws on the subject of laying out, opening, altering and working roads and highways, and as to the age at which citizens shall be subject to road or other public duty; (3) amending section 7 of her constitution relating to municipal bonded indebtedness.

#### VIRGINIA.

The legislation of Virginia during the year is of exceptional importance. It is found in the acts of the prolonged extra session, which extended through 1902-3-4 and also in the general session held this year. The general purpose of this legislation is to adapt the laws of the old commonwealth to her

new constitution, adopted in 1902. The laws of especial importance are those relating to the State Corporation Commission, a body consisting of three members and created by the constitution through appointment of the governor confirmed by the legislature. The procuring and amending of charters is largely under the jurisdiction of this commission. The provisions are very liberal toward the corporations and enable three or more persons to obtain a charter for any lawful business on almost any terms they desire by applying therefor and paying the charter tax, which is a graduated one. So far as private corporations are concerned, it is clearly the policy of the state, as disclosed in these laws, that they shall play an important part in business life. This commission is given extensive visitorial powers over corporations.

The act concerning public service corporations is of much more than ordinary interest. These corporations are defined as including transportation and transmission companies, turnpike and other internal improvement companies, and gas, pipe line, electric light, heat, power and water supply companies, and all persons, firms, partnerships, associations or corporations authorized to exercise the right of eminent domain, or to use or occupy any public highway, whether along, over or under the same, in a manner not permitted to the general public, but excluding all municipal corporations and public institutions owned or controlled by the state. These corporations are placed under the control and dominion of the state corporation commission. The commission is clothed with the powers of a railroad commission, and the regulation of rates. I should be tempted at this stage to review at some length the features relating to the regulation of transportation companies and their rates were it not for the exceptionally able article prepared by Mr. Braxton, of the Virginia Bar, and published in the July-August number, 1904, of the *American Law Review*. Suffice it to say that the commission is clothed with executive, legislative and judicial powers, and this seems to have been contemplated by the constitution, for in its

article relating to the division of the powers of government, legislative, executive and judicial departments are required to be kept separate and distinct, so that neither may exercise the powers properly belonging to either of the others, nor may any person exercise the powers of more than one of them at the same time, subject to the significant qualification "except as hereinafter provided," and then follows in another place a provision granting the legislative, executive and judicial powers to the state corporation commission, in the regulation of public service corporations. In the original constitution of Virginia drafted by Jefferson there was no such exception, his idea being to keep these departments separate and distinct at all times and places.

Careful provisions are made for an appeal to the Supreme Court of Appeals from all decisions of the state corporation commission of a judicial nature, and the remedies through the courts as against wrongful executive or legislative action are preserved.

By other acts, Virginia authorizes the recording of deeds on certificates of acknowledgment before a justice of the peace, a commissioner in chancery of a court of record or a notary "in the Philippine Islands, Porto Rico or any territory or dependency of the United States."

The failure of an attorney at law to pay over or deliver to the person entitled thereto, within a reasonable time after demand, any money, security or other property, which has come into his hands as such attorney, is made a sufficient ground for revocation or suspension of his license.

Attorneys are given a lien for their fees in all actions sounding *in tort* or for unliquidated damages on contract, and the act makes void against such lien, except as evidence of the defendant's liability on the cause of action, all settlements made between the parties where written notice of a claim to such lien has been given by the attorney.

The code is amended in relation to giving bribes to and their acceptance by public officers. The code provided for the

case of a bribe given "corruptly" or accepted "corruptly." The amendment omits the word "corruptly," and makes it an offense to leave the state for the purpose of giving or accepting any gift or gratuity to or by a public officer to influence his action and raises the punishment to confinement in the penitentiary instead of jail, as heretofore, and also forfeits the office in case of acceptance of the gift or gratuity.

Various changes are made in the law regulating the transportation of bodies of persons who died of contagious diseases. The changes are intended to protect the public against the spread of disease.

Debts due nurses and to sanitariums or hospitals in last illness, not exceeding fifty dollars, are preferred after funeral expenses.

An act permits children, where either parent was a slave, to inherit from the father, where the mother was recognized by the father as his wife and the child as his child.

To already existing cases of contempt of court for which summary punishment may be imposed by the court, there is added: "Obscene, contemptuous or insulting language addressed to a judge for or in respect of any act or proceeding had or to be had in such court, or like language used in his presence or intended for his hearing, for or in respect of such act or proceeding."

The time in which a decree for a divorce from bed and board may be changed to a divorce from the bond of matrimony, is reduced from five to three years after the first decree.

It is made a misdemeanor, punishable by fine and disbarment, for an attorney to print, publish, distribute or circulate any advertisement or printed matter offering to procure or aid in procuring any divorce, severance or annulment of any marriage or offering to engage or appear as attorney in any suit for alimony, divorce or dissolution of any marriage.

Another act provides for the taking of the deposition of the woman alleged to have been assaulted in a prosecution for rape in the presence of a judge, the commonwealth's attorney, the



prisoner and his counsel. No other persons can be present without the express permission of the judge except the officers taking the depositions.

Town councils and boards of supervisors are authorized to prohibit either absolutely or conditionally any railway company from transporting any excursion or picnic party to any point in the county or to any town which has not adequate police protection.

It is made a misdemeanor, punishable by a fine in jail, for a husband without just cause to desert or fail to provide for wife or minor children in necessitous circumstances.

All persons, firms and corporations employing large bodies of laborers are required to have them inspected at such times as the board of health of the county or corporation in which they are employed may require and to have them vaccinated when the examining officer requires it. The examination and vaccination to be at the expense of the employer.

Placing any sample of medicine on any premises without the permission of the occupant is made a misdemeanor.

Knowingly to use the name or picture of a person for advertising purposes or for the purpose of trade without his consent is made a misdemeanor, and such person is given the right to enjoin such use of his name or picture and to recover damages therefor.

All corporations operating sleeping, dining, palace, compartment and chair cars and their agents, conductors or employees are given the right to refuse to permit any person to enter or ride in such car whenever in their discretion it is advisable to do so.

A method is provided, by notice and motion before a justice or a court, for enforcing liens and reservations of title upon personal property, securing the price thereof.

A tax of \$200 is imposed upon gipsies and like strolling companies.

Another act provides for the establishment, proper construction and permanent improvement and repair of the public roads

and landings, bridges, causeways and wharves in the several counties of the state.

#### TERRITORY OF ALASKA.

The territory of Alaska has a governor and federal judges appointed by the President, but no legislature. During the year Congress passed acts amending and modifying the laws relating to municipal corporations in the territory, providing for the creation of municipal corporations by communities of 300 or more permanent inhabitants, fixing the qualifications of voters at municipal elections and providing for the appointment of road overseers and the establishment of road districts.

#### DISTRICT OF COLUMBIA.

The government of the District of Columbia is vested by Congress in three commissioners, two of whom are appointed by the President from citizens of the District and confirmed by the Senate and the other from the Corps of Engineers of the United States Army. Congress makes all laws for the District, the commissioners having authority only to make police, building, plumbing and other regulations of a municipal nature. During the year Congress has passed laws applicable to the District of Columbia :

A law was enacted similar to the laws passed in Georgia and Kentucky making void the sale of stocks of goods or merchandise in bulk unless previous notice is given to all of the creditors of the seller.

No combustible or non-fireproof building to be used as a residence, apartment house, hotel, hospital or dormitory in the District can now be erected having more than five stories or raised to a height exceeding sixty feet.

The selling or removing from the District of personal property held on a written and conditional bill of sale is made punishable by a fine of not more than \$100 or imprisonment for not more than ninety days.

Owners or managers of massage establishments in the District of Columbia shall pay a license of \$25 per annum. It is made unlawful for any female to give or administer massage treatment or any bath to any person of the male sex or any person of the male sex to give massage treatment or any bath to any person of the female sex, subject to a fine upon conviction of not less than \$40 nor more than \$100 or imprisonment for not less than thirty days nor more than ninety days.

Quaker marriages are legalized in the District.

Another act provides for the summary arrest without warrant by any member of the metropolitan police or any other officer of the District authorized to make arrests of any insane person or persons of unsound mind found in any street, avenue, alley or other public highway or found in any public building or other public place within the District and makes it the duty of the officer making the arrest to file with the major or superintendent of the police force an affidavit to the effect that the party arrested is of unsound mind, incapable of taking care of himself, and if permitted to remain at large or to go unrestrained the rights of persons or of property will be jeopardized or the preservation of the public peace imperiled and the commission of crime rendered probable, and it further provides for the sending of notice to the husband, wife, or some near relative or friend whose address may be known or which upon reasonable inquiry may be ascertained. The purpose of this act is evidently to protect the Chief Executive and other public officers against cranks.

#### OKLAHOMA AND INDIAN TERRITORIES.

Oklahoma is a regularly organized territory after the American plan under an organic act of Congress similar in nearly every respect to the organic acts of the other territories from which states have been created. Her territorial legislature has not been in session during the year. Over this territory Congress has supreme legislative jurisdiction, if it deems proper to exercise it, and during the year has enacted laws

authorizing the sale of certain railroads of Oklahoma companies to railroad companies of other states owning connecting lines; made the usual appropriations for the expenses and salaries of the territorial officials; prohibited the territorial legislative assembly from considering any proposition or passing any bill to remove the seat of government from its present location at Guthrie and from making any appropriation or entering into any contract for a capitol building or any other building; and opened to public entry certain lands ceded to the government by the Indians—the Cheyennes and Arapahoes.

The Indian Territory has no organized territorial government and is practically governed by the United States courts and marshals and the Interior Department of the United States and as between the Indians themselves by Indian tribal officials. During the year there has been much congressional legislation affecting this territory.

Congress passed an act appropriating \$100,000 for enlarging the tribal Indian schools and providing for the attendance therein of the children of others than Indians. This is the first aid Congress has given to the education of the non-Indian children in the Indian Territory.

Congress also appropriated \$25,000 for the care and support of insane persons (Indian citizens and non-Indian citizens) in the territory, and this is the first provision made affording the federal officers of the territory means to care for the insane.

Four additional United States judges were authorized, one for each of the present districts, making two judges in each district, but the judges last appointed are not made members of the territorial Court of Appeals.

Defendants in criminal cases have been permitted to give bail pending appeal. Heretofore they have been compelled to lie in jail, a condition simply disgraceful to our jurisprudence.

Acts were passed by Congress regulating the practice of medicine and surgery and establishing a board of pharmacy and the qualification of pharmacists in the territory.

Provisions have also been made for the closing of the work of establishing town sites and allotting lands in the territory.

The Secretary of the Interior has been authorized to sell at public sale in not exceeding 160-acre tracts the overplus of Creek lands after allotment.

Perhaps the most important act in its effect upon titles to lands and the development of the territory is that providing for the removal of all restrictions upon the sale of lands (not homesteads) of allottees of age and not of Indian blood and further providing for the removal of the restrictions except as to homesteads on all Indian allottees of age by the Indian agent of the United States upon the approval of the Secretary of the Interior. Since the passage of this act a great many of the allottees in the territory have taken advantage of it and have sold portions of their allotments.

An act was also passed authorizing the Secretary of the Interior to grant rights of way for pipe lines through the Indian Territory, the necessity for this measure arising from the discovery there of large fields of oil and gas.

Oklahoma and the Indian Territory are the only portions of the Louisiana purchase which have not been admitted to statehood. In the treaty of Paris of April 30, 1803, concluded by Napoleon and Jefferson, whereby the colony or province of Louisiana was ceded by the French republic to the United States, it was expressly covenanted by our republic: "The inhabitants of the ceded territory shall be incorporated in the union of the states and admitted as soon as possible, according to the principles of the federal Constitution, to all the rights, advantages and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess." The time for the fulfillment of that promise is at hand. During the year the lower house of Congress passed a bill, which is now pending in the Senate, providing for the admission of Oklahoma and Indian Territory into the union as one state bearing the name of Oklahoma.

The great national political parties are committed in favor of single statehood for the two territories. If the new state is created, it will be about as large in area as Missouri, and with a population at the start approximating that of Kansas. It will be in the number of its inhabitants and the value of their property holdings at the time of its admission, much greater than any other state which has ever been admitted to the union since the adoption of the federal Constitution. The new state will be rich in agricultural and mineral resources, with almost unequaled railroad facilities, and worth more to the people of our country than all of the archipelagoes lying in the tropics of the eastern seas.

#### NEW MEXICO AND ARIZONA.

The treaties with Mexico under which the United States acquired these territories promised ultimate statehood, the time to be determined by Congress, and bills are pending in Congress for their admission as a state or states of the union. The division in the opinion of Congress now is whether two states shall be made or only one. They are regularly organized territories, and no sessions of their territorial legislatures were held within the last year.

During the year Congress passed an act creating an additional district judge for New Mexico; and provided that the trial judges, which there constitute the supreme court, shall not sit in the appellate court in any cases tried by them in the lower court. Congress made the usual appropriations for these territories, and passed other acts of local application not of sufficient interest to notice.

When statehood is provided for Oklahoma and Indian Territory, New Mexico and Arizona there will be no other territory of the United States to which Congress is obligated by treaty to grant statehood.

## HAWAII.

Hawaii is equipped with a regular territorial form of government, including executive, legislative and judicial departments. During the year there was an extra session of the legislature of this territory, which was called to meet an exigency arising from the failure of the appropriations made at the session of 1903. The supreme court of the territory had pronounced the county government bill to be unconstitutional on the ground that it included territorial taxation as well as county taxation. The exigency seems to have been met by the passage of a joint resolution appointing a committee of five to draft a county act, the members to serve without pay. The legislature also amended a former act for the payment of current accounts, by authorizing the treasurer to arrange with any of the banks for an overdraft not to exceed \$500,000.

The only important congressional legislation of the year affecting Hawaii is an act appointing a superintendent of public instruction; and directing the United States Commissioner of Labor to collect, assort and present in reports in 1905, and every five years thereafter, statistical details relating to the departments of labor in the territory of Hawaii, especially in relation to the commercial, industrial, social and sanitary condition of the laboring classes, and charging the commissioner to ascertain the highest, lowest and average number of employees engaged in the various industries in the territory, to be classified as to nativity, sex, hours of labor and conditions of employment, and report the same to Congress.

## PORTO RICO.

Porto Rico has a civil government established by act of Congress effective May 1, 1900. It has a governor and legislature, the latter consisting of the Executive Council, or "Upper House," composed of the governor, secretary, attorney general, treasurer, commissioner of interior and commissioner of education and five native Porto Ricans appointed

by the President, and the House of Delegates, or the "Lower House," consisting of thirty-five members elected by the people. The island is represented near the Congress of the United States by a resident commissioner at Washington.

The second session of the Second Legislative Assembly was held during the year and many laws were passed, among them what seems to be a very excellent code of civil procedure, which enumerates the courts of justice of the island as a supreme court, district court, municipal and justice courts, and makes general provisions respecting such courts and the judges thereof, provides for the time of commencing civil actions, for the parties to them, the place of their trial, change of venue, pleadings, judgments, executions, proceedings supplemental to execution, bills of exception and appeals. It provides that the pleadings may be in the English language, but those in writing must be accompanied by copies in the Spanish language and oral pleadings made through an interpreter. Other acts were passed preventing cruelty to animals, providing elaborately for oxen drawing ox-carts and requiring the driver to walk in front of the oxen; incorporating trustees of the Carnegie Free Public Library of Porto Rico; preventing and punishing the desecration of the flag of the United States by placing any mark or advertising thereon or publicly mutilating, defacing, defiling, trampling upon or casting contempt thereon either by word or act; creating an Insular Loan Commission and authorizing it to negotiate for loans; providing for marriages by regularly licensed or ordained priests or other ministers of the gospel, Jewish rabbis and judges of the supreme, district and municipal courts and justices of the peace, and the registration and recording of the certificates of marriage; making an additional appropriation for the Porto Rican exhibit at the Louisiana Purchase Exposition; elaborately amending the original law providing for the raising of revenues by direct taxation upon the real and personal property of the island.



An extraordinary session of seven days, from May 23d to June 1st, was held and the acts passed by it relate chiefly to the amendment and correction of existing laws and directing the exhibit now at St. Louis to be transferred to the exposition to be held at Liege, Belgium, in 1905.

The enacting clause of the legislature of Porto Rico is, "Be it enacted by the Legislative Assembly of Porto Rico."

The only thing done by Congress in relation to Porto Rico in addition to appropriations for the resident commissioner of Porto Rico in the United States, for agricultural experimental stations, for lighthouse expenses and quarantine service was the passage of a joint resolution providing for the transportation of 600 Porto Rican teachers and 25 attendants to the United States on vessels engaged in the transport service of the United States for the purpose of attending the various summer schools of the universities of the United States on payment of a subsistence charge of one dollar per day while in transit, the government of the United States not to be chargeable with any expenses of the teachers and attendants while in the United States.

#### THE PHILIPPINES.

Under the initiative of President McKinley and the continuance of our present Chief Executive, by virtue of the powers of the Commander-in-Chief of the Army and Navy of the United States, a civil government now exists, confirmed and sanctioned by the Act of Congress of July 1, 1902, providing for the administration of the affairs of civil government in those islands. The law-making body of this government is the Philippine Commission, composed of five Americans and three Filipinos appointed by the President. The law of Congress just alluded to provides that within two years after the taking of the census now being compiled the legislature shall consist of two houses, the Philippine Commission and the Philippine Assembly, the latter to be elected by the inhabitants of the islands. In a compilation of date April 21, 1904, pre-

pared under the direction of the Secretary of War (Judge Taft) by the Bureau of Insular Affairs of the War Department and printed by the United States Senate, entitled "What has been done in the Philippines," I find the following statement: "The sessions of the Commission, wherein they have exercised legislative power, have been stated and public. Their legislative enactments have been publicly introduced and printed in the form of bills. When of general public interest they have been made the subject of public hearings before committees, which the people of the island have freely attended and at which their views have been freely expressed. Ordinary legislative opportunities for amendment have been afforded and bills and amendments have been publicly debated and voted upon." Under the law of Congress the enacting clause of these acts is: "By authority of the United States, be it enacted by the Philippine Commission." The laws passed are required to be reported to Congress, which reserves the power and authority to annul them.

From the beginning to July 2, 1904, the Philippine Commission has passed 1189 acts. Of these 326 have been passed since September 1, 1903. Novel and intensely interesting as many of them are, it is impossible within any reasonable limit to review those enacted during the year. Among some of the most notable and diverse acts are:

An act authorizing courts of first instance to order the execution of lawful sentences of military commissions and provost courts in criminal cases in which such sentences were confirmed by proper authority and have not been executed, and which cannot be executed by the courts imposing them because of their abolition.

An act providing for the collection of duties on goods, wares and merchandise imported into the islands for the use of the insular, provincial or municipal governments, providing for the same duties as upon other importations.

An act providing for provincial pounds and for keepers thereof, and for the disposition of stolen animals and other

movable property captured or seized by the Philippine constabulary and other peace officers.

An act authorizing the increase of the enlisted strength of the Philippine constabulary to not exceeding 7000 men of all grades.

An act appropriating money to make necessary repairs to walls along the Pasig River, and for improving the port of Manila.

An act appropriating the sum of 39,000 pesos, Philippines currency, for the purchase and operation of the arrastre plant for unloading, conveying and delivering imported merchandise at the Manila custom house.

An act authorizing the suspension of sentences for vagrancy imposed upon citizens of the United States in certain cases, and providing for the transportation of convicted vagrants to the United States.

An act appropriating money for the salary of the Superintendent of the Insular Cold Storage and Ice Plant.

An act creating the office of Superintendent of the Telegraphic Division of the Philippine Constabulary.

Many acts appropriating money for public roads in the various provinces.

An act appropriating \$10,000 money of the United States to aid the expenses of a commission, appointed by the President of the United States, to Peking, China, to bring about international co-operation in securing a fixed ratio between gold and silver coin in the Orient.

An act constituting a gold standard fund in the insular treasury to be used for the purpose of maintaining the parity of the Philippine peso with the gold standard peso, and organizing a division of the currency in the Bureau of the Insular Treasury through which such funds shall be maintained, expenditures made therefrom and accretions made thereto, and providing regulations for the exchange of currencies and for the issue and redemption of the silver certificates.

An act to defray expenses incurred in the publication of the opinions of the attorney general of the Philippine Islands.

An act providing for the payment of the salaries of provincial and municipal officers and employees in Philippine currency, which have heretofore been payable, under the law, in Mexican currency, on the basis of one Philippine peso for one Mexican dollar.

An act providing for the issue of \$7,237,000 gold coin bonds of the government of the Philippine Islands.

An act authorizing the additional issue of \$3,000,000 of certificates of indebtedness, under and by virtue of the act of Congress establishing a standard of value and providing for a coinage system in the Philippine Islands.

Various acts providing for loans in small amounts to different provinces in the islands.

An act giving to courts of first instance jurisdiction over all offenses made punishable by a former act defining the crimes of slave holding and slave hunting, and prescribing the punishment therefor.

An act amendatory of a former act creating a board of fifty Filipinos of prominence and education, to visit the Louisiana Purchase Exposition at St. Louis at government expense.

An act appropriating \$200,000 in continuation of the exhibit of the Philippine Islands at the Louisiana Purchase Exposition.

An act relating to the payment of the premium charges upon the bonds of bonded insular, provincial and municipal officers and employees.

An act requiring the reports of the decisions of the Supreme Court to be published in both the English and Spanish languages and bound in separate volumes.

Acts providing for the establishment of local civil governments for non-Christian tribes in the provinces of Isabella and Tayabas.

An act providing for the administration and temporary leasing and sale of certain lands known as "Friar lands," for

the purchase of which the government of the Philippines has recently contracted.

An act prescribing rules and regulations governing the homestead, selling and leasing of portions of the public domain and of the Philippine Islands, prescribing terms and conditions to enable persons to perfect their titles to public lands in said islands, providing for the issuance of patents without compensation to certain native settlers upon the public lands, providing for the establishment of town sites and sale of lots therein, and providing for the determination by the Philippines court of land registration of all proceedings for completion of imperfect titles and for the cancellation or confirmation of Spanish concessions and grants in said islands, as authorized by sections 13, 14, 15 and 62 of the Act of Congress of July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands and for other purposes."

An act relating to the crime of brigandage and providing punishment for the failure of municipal officials to perform their duty respecting it.

An act appropriating the sum of \$500,000 in money of the United States from the fund of \$3,000,000 appropriated by the Congress of the United States for the relief of distress in the Philippine Islands.

A forestry law protecting all forests included in the unserved public lands.

A comprehensive internal revenue law, moneys derived therefrom to be used for the support of the insular, provincial and municipal governments. The sources of revenue are license taxes, taxes on distilled and fermented liquors, on tobacco of all kinds, matches, banks and bankers, stamp taxes on specified objects, personal poll taxes, taxes on insurance companies, forestry products, mining concessions and on business, manufacture and occupation.

It must be said for these acts of the Philippine Commission that they are in form and phraseology exceptionally good, and

the title of each act is clearly stated, as is required by the Philippine law. The laws are published in the official Gazette at Manila from time to time as they are passed and are also printed on fine paper and in fine large type by the Bureau of Public Printing of Manila.

During the year there has been very little legislation by Congress respecting the Philippines, that work having been done by the Philippine Commission. In the army appropriation act Congress has provided that hereafter in computing the length of service for retirement credit shall be given soldiers for double time of their actual service in China, Cuba, the Philippine Islands, the island of Guam, Alaska and Panama, but double credit shall not be given for services hereafter rendered in Porto Rico or the territory of Hawaii.

Congress passed one very important act of far-reaching consequence to regulate shipping in trade between ports of the United States and ports or places in the Philippine archipelago and between ports or places in the Philippines which deserves a brief review. Its important provisions are that on and after July 1, 1906, no merchandise, except supplies for the army or navy, shall be transported by sea, under penalty of forfeiture thereof, between ports of the United States and ports or places in the Philippine archipelago, directly or via a foreign port or for any part of the voyage in any other vessel than a vessel of the United States, but this does not prohibit the sailing of any foreign vessel between any port of the United States and any port or place in the Philippine archipelago, "Provided, that no merchandise other than that imported in such vessel from some foreign port which has been specified on the manifest as for another port and which shall not have been unloaded shall be carried between a port of the United States and a port or place in the Philippine archipelago." The act further provides that on and after July 1, 1906, no foreign vessel shall transport passengers between ports of the United States and ports or places in the Philippine archipelago, either directly or by way of a foreign port,

under a penalty of \$200 for each passenger so transported and landed. The law is not to apply to the voyage of a vessel between the United States and the Philippines begun before July 1, 1906. After the passage of the act the same tonnage taxes shall be levied, collected and paid upon all foreign vessels coming into the United States from the Philippine archipelago which are required by law to be levied, collected and paid upon vessels coming into the United States from foreign countries. The Philippine Commission is authorized and empowered to issue licenses to engage in lighterage or other exclusively harbor business to vessels or other craft actually engaged in such business at the date of the passage of this act and to vessels or other craft built in the Philippine Islands or in the United States and owned by citizens of the United States or by inhabitants of the Philippine Islands. The act is not to be construed to impair or affect any privilege guaranteed to Spanish ships and merchandise by the treaty of peace between the United States and Spain. The Secretary of Commerce and Labor is authorized to issue regulations for the enforcement of the act, provided that such of the navigation laws of the United States as are in force in the Philippine archipelago in regard to vessels arriving in the Philippine Islands from the mainland territory and other insular possessions of the United States shall continue to be administered by the proper officials of the government of the Philippine Islands.

The purpose of this act is to give the vessels of the United States a monopoly of the ship transportation between the United States and the Philippines.

#### PANAMA.

Since the last meeting of this Association the Republic of Panama has been born and assumed a place on the map of the world, and by treaty with the new-born republic the United States has secured what is known as the "canal zone," with the exclusive right to construct, own, maintain and operate a

ship canal and railroads across the Isthmus. At the time of this treaty a distinguished citizen of the Chinese Empire, who was then visiting these grounds, said to one of our people: "You do things very quickly in this country. In China when we want another country we either secure it through long negotiations by treaty or go to war for it and take it. Here you simplify the accomplishment of your purposes by having an over-night revolution."

Immediately following the successful termination of the Panama revolution and the divorcement of Panama from Colombia, a treaty between the Republic of Panama and the United States was consummated, and on February 26, 1904, duly proclaimed by the President of the United States. Without exaggeration it may be said that this is one of the most important treaties ever entered into by the federal government. By its terms the Republic of Panama grants to the United States in perpetuity for the construction, maintenance, operation, sanitation and protection of the canal the use, occupation and control of a zone of land and land under water of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the canal to be constructed; the zone beginning in the Caribbean Sea three marine miles from mean low water mark, and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark, with the proviso, however, that the cities of Panama and Colon and harbors adjacent to these cities which are included within the boundaries of the zone, are not included within the grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other land and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation and sanitation and protection of the canal, or any auxiliary canal or other works necessary and convenient, and further grants to the United States in perpetuity all islands within the limits of the zone above described, and in addition



thereto the group of islands in the Bay of Panama named Perico, Naos, Culebra and Flamenco. Panama further grants to the United States full sovereignty over the zone so granted to the same extent that it would possess and exercise sovereignty if it were the sovereign of the territory within which the lands and waters are so located, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority; and further agrees that the United States shall have in perpetuity a monopoly of the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

By an act of Congress, approved April 28, 1904, a temporary government of the canal zone acquired under the above treaty, and for the protection of the canal works, and for other purposes, is provided for, whereby the President, upon the acquisition of the property of the new Panama Canal Company and the payment to the Republic of Panama of the \$10,000,000 provided in the treaty, is authorized to take possession of and occupy the canal zone, and until the expiration of the Fifty-eighth Congress (the fourth of March next) all military, civil and judicial powers, as well as the power to make all rules and regulations necessary for the government of the canal zone, is vested in such person or persons and to be exercised in such manner as the President shall direct.

By letter of the President of the United States to the Secretary of War, on May 9, 1904, the government of the canal zone is vested in the Isthmian Canal Commission, under the supervision and direction of the Secretary of War, and the commission is given full authority to legislate for the zone, four of the members of the commission constituting a legislative quorum, and the enacting clause of their legislative acts to be "By authority of the President of the United States." All the enactments of the commission are required to be submitted to the Secretary of War, and if not approved, then from that time shall have no force and effect. A retired

major general of the United States Army (George W. Davis), a member of the canal commission, is appointed governor of the zone and clothed with executive powers, to be exercised in the name of the President of the United States, and is authorized to grant reprieves and pardons, call upon the Secretary of War whenever the necessity arises for military or naval assistance, and in the event of a sudden exigency to call upon any available military or naval force of the United States for assistance. The following extract from the letter of the President is of exceeding interest :

“The laws of the land with which the inhabitants are familiar and which were in force on February 26, 1904, will continue in force in the canal zone and in other places on the Isthmus over which the United States has jurisdiction until altered or annulled by the said commission, but there are certain great principles of government which have been made the basis of an existence as a nation which we deem essential to the rule of law and the maintenance of order and which shall have force in said zone. The principles referred to may be generally stated as follows :

“That no person shall be deprived of life, liberty or property without due process of law ; that private property shall not be taken for public use without just compensation ; that in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense ; that excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted ; that no person shall be put twice in jeopardy for the same offense or be compelled in any criminal case to be a witness against himself ; that the right to be secure against unreasonable searches and seizures shall not be violated ; that neither slavery nor involuntary servitude shall exist except as a punishment for crime ; that no bill of attainder or *ex post facto* law shall be passed ; that no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the government for a redress of

grievances; that no law shall be made respecting the establishment of religion or prohibiting the free exercise thereof; provided, however, that the commission shall have power to exclude from time to time from the canal zone and other places on the Isthmus over which the United States has jurisdiction persons of the following classes who were not actually domiciled within the zone on the 26th day of February, 1904, viz.: Idiots, the insane, epileptics, paupers, criminals, professional beggars, persons afflicted with loathsome or dangerous contagious diseases, those who have been convicted of felony, anarchists, those whose purpose it is to incite insurrections and others whose presence it is believed by the commission would tend to create public disorder, endanger the public health or any manner impede the prosecution of the work of opening the canal, and may cause any and all such newly arrived persons or those alien to the zone to be expelled and deported from the territory controlled by the United States, and the commission may defray from the canal appropriation the cost of such deportation as necessary expenses of the sanitation, the police protection of the canal route and the preservation of good order among the inhabitants."

Here we see the President declaring as in force in the zone many of the guaranties of the bill of rights of the federal Constitution and omitting others.

Laws have already been passed by the canal commission, but I regret to say that I have not been able to secure copies of them.

Our other insular possessions, such as Guam, ceded by Spain in the treaty of 1898, and Tutuila and its attendant islets of the Samoan group, acquired by the tri-partite treaty with Great Britain and Germany in 1899, are governed by the President under the war powers of the Constitution, through the Navy Department, which acts through military governors, generally officers of the Navy. I have not received any of their legislative decrees. Some succeeding President of our Association, no doubt, will explore those fields and find matters of interest sufficient to be perpetuated on our records.

## GENERAL LAWS OF CONGRESS.

By a joint resolution of Congress, approved April 9, 1904, an invitation was extended to the Inter-parliamentary Union for the Promotion of International Arbitration, composed of members of the parliaments and national legislative bodies of different countries of Europe, to hold its session of 1904 in the United States, and the sum of \$50,000 was appropriated for the purpose of defraying the expenses incident to the session. This meeting was successfully held in the Hall of Congresses on the Exposition grounds in St. Louis on the 12th, 13th and 14th instant.

By another joint resolution the Secretary of State was directed to include in the marginal references of the United States statutes at large the number of the Senate bill, House bill, Senate joint resolution or House joint resolution under which each act was approved and became a law. These marginal references will be very valuable in tracing the history of each act.

By an act of Congress passed during the year, provision is made for the creation of a commission to consider and recommend legislation for the development of the American merchant marine, to be composed of five members of the Senate and five members of the House of Representatives.

By a joint resolution, it was declared to be the sense of the Congress of the United States that it is desirable, in the interest of uniformity of action by the maritime states of the world in time of war, that the President endeavor to bring about an understanding among the principal maritime powers with a view of incorporating into the permanent law of the civilized nations the principle of the exemption of all private property at sea not contraband of war from capture or destruction by belligerents.

From this review it will be observed that some of the legislative acts are of quite similar import, such as those of New York and Kentucky relating to the regulation of automobiles; those of Kentucky and Iowa as to stealing chickens and other

fowls; those relating to vagrancy and having a bearing on the question of labor of the negro population, in Georgia, Kentucky and Mississippi; those of Georgia, Kentucky and Mississippi creating school book commissions, and requiring a uniform series of text books; those of Massachusetts, Ohio and Rhode Island regulating theaters and other amusement halls, which were brought about by the woful tragedy of the Iroquois Theater fire at Chicago; those of Georgia, Kentucky and of Congress applicable to the District of Columbia, regulating the sale of stocks of goods in bulk.

This review has not included, except in a few special instances, reference to appropriations made by the various legislative bodies, provincial, territorial, state and national, and yet, if time would permit, comment on these appropriations would be interesting, for they show more strikingly than any other laws the actual workings of the governments and their various subdivisions, and illustrate in a startling manner the growth of governmental cost.

The absence from the legislation of the year of any laws touching what may be called the substantive rights of the people in their lives, liberties or properties is quite noticeable. There is also little affecting the procedure of the courts or the rules of evidence. The great body of the common law and of the civil law where they respectively prevail has been left untouched. The legislation in the states has nearly all been regulative in character, especially of the governing officials and various boards of control. If I were to characterize this legislation in a general way, I would say it is regulation, regulation, regulation everywhere. There has been much constructive legislative work in Porto Rico and the Philippines. There has been no legislation, state or national, on the subject of trusts and, except in Virginia, none relating to regulation of rates of public service corporations.

The existing status of Porto Rico and the Philippines and the other possessions acquired by conquest and treaty from Spain is phenomenal, and deserves the thoughtful consider-

ation of all American citizens, and especially of the American lawyers, who compose the visible and collective force known as the Bench and Bar. In times of peace the collective wisdom and united will of the lawyers are more potential than armies or navies. They influence, if not control, presidents and cabinets and all departments of government, for at every step and stage all of these officials are inclined to conform their action to the elemental law of the land as given to them by their legal advisers.

The treaty with Spain under which the United States acquired Porto Rico and the Philippines specifies: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." The territories ceded by the terms of the treaty belong to the United States, but Congress has not yet determined the civil rights and political status of the inhabitants. The inhabitants of all other territories belonging to the United States, including those of Hawaii and the Indians of the Indian Territory, have been declared citizens of the United States. Is it not inevitable, unless there is to be a departure from American principles, traditions and precedents, that the inhabitants of Porto Rico and the Philippines, if those islands are to be permanently retained by us, must be made citizens of the United States with all the rights and privileges and constitutional guaranties of citizen residents of a territory of the United States? It seems to be the consensus of opinion that we are permanently to retain Porto Rico. The political question remains yet to be determined whether we are permanently to retain the Philippines. Is it not therefore clear that Porto Rico must be treated as a territory of the United States and her people made citizens of the United States? So, if it shall be determined permanently to retain the Philippines, must not the same course be pursued, and those islands be made a territory of the United States and their inhabitants citizens of the United States? We cannot rule them as the Roman

consuls ruled the Roman provinces, nor as England, through the East India Company, ruled the East Indies, nor as Spain ruled her colonies. It may be that the federative principle which forms the basis of our government is strong enough, working through central authority and local self-government, to take in distant countries and different races of other climes and languages, and if so, whatever territories we permanently retain, and whatever peoples we determine permanently to govern, must be governed as a constitutional republic should govern according to American plans, principles and precedents, and not those of the governments of another hemisphere. Is it not equally clear that not only should all peoples of American territories not in a savage state owing allegiance to the United States be citizens of the United States, but also that all American territory permanently held should be within the zone of that free trade which since the adoption of the federal Constitution has always existed between the states of the union and the territories of the United States with respect to themselves and each other? We all agree that the most practicable and proper sources of revenue for the United States are through the custom house from the taxes on foreign imports. We may differ, we have differed and perhaps we always shall differ as to the character of the tariff—whether high or moderately protective, whether a tariff for revenue with incidental protection or for revenue only, yet throughout our history our people have stood as a unit, whatever their views on the tariff, for absolute free trade between the states and the territories of the United States. As recently as 1900, when a serious movement was made in Congress to put in force, as between the United States and Porto Rico, the existing tariff applying to imports from foreign nations. a wave of indignation and protest arose from our people which checked the movement and resulted in the passage of a mild law making the tariff only fifteen per cent. of the existing tariff, with a proviso that the proceeds should be applied to the necessities of the Porto Rican government and that the tariff should be

removed as soon as the Porto Rican government could provide a means for raising revenue for her own needs. Afterwards the legislative assembly of Porto Rico enacted a system of local taxation sufficient for her needs, and thereupon, and upon notification thereof, the President, as I have understood with much personal pleasure, proclaimed the cessation of all tariff duties between Porto Rico and the United States, and none exist to-day. Are not the American people submitting to the present tariff between the Philippines and the United States only upon the ground of temporary necessity and because it has not been determined permanently to retain the Philippines? In my judgment the need of the times is that the mandate should go forth to the American people, as the judgment of the American lawyers, that territories can only be permanently held by the United States upon the condition that the inhabitants shall be citizens of the United States and that there shall be no tariff walls between such territories and the states of the union, but all shall be within that zone of free trade which has heretofore included our states and territories. In the light of such mandate and with a knowledge of the conditions which it exacts, the American people may intelligently decide what territory is to be permanently retained. I am not one of those who think that it is absolutely essential that all territories of the United States should be admitted to statehood, for I believe that under our system territories can be governed as such in harmony with our republican-democratic constitutional principles. The point which I emphasize is, and it seems to me that the ultimate judgment of the lawyers of the country will enforce it, that the inhabitants of our territories must be entitled to United States citizenship and they must have free and unvexed trade relations with us. Otherwise there will be a departure from constitutional methods and principles which will be revolutionary in its nature and lead us to an imperialism which is inconsistent with republican-democratic institutions.



Before concluding this address, I desire to return my thanks to each and every member of the General Council in the states and territories wherein legislative sessions were held during the year for the promptness and efficiency with which they discharged their constitutional duty in furnishing me with a synopsis of the legislation affecting their respective states and territories, much of which I have incorporated in my printed address, and my special acknowledgments are due to the member from the District of Columbia and to the Secretary of War for data covering legislation affecting our territories and insular possessions and the canal zone at Panama.

# THE LOUISIANA PURCHASE ; ITS INFLUENCE AND DEVELOPMENT UNDER AMERICAN RULE.

ANNUAL ADDRESS BY

AMOS M. THAYER,

OF ST. LOUIS, MISSOURI,

United States Circuit Judge for the Eighth Circuit.

*Mr. President and Gentlemen of the American Bar Association :*

The American Bar Association meets for its twenty-seventh annual session in the city of St. Louis, on the extreme eastern border of that great empire once termed the Louisiana territory, which the United States acquired by purchase from France during the early days of the last century. It meets also in the midst of beautiful and stately edifices filled with the handiwork of man drawn from all quarters of the civilized world, which have been erected by the United States and the patriotic people of the Louisiana territory on grounds set apart for that purpose, to commemorate in a fitting manner the one hundredth anniversary of the purchase. The place of our meeting, our surroundings and the occasion naturally direct attention to that remarkable incident in the nation's history which the exposition now being held in these grounds was designed to commemorate. Under these circumstances I trust that I shall be pardoned if I speak during the hour assigned to me concerning the results of the Louisiana purchase, and to some extent of the manner in which the federal government has exercised its sovereignty over the acquired territory and aided in the creation of the fourteen free and independent states which have been carved, in whole or in part, out of the purchase.

No other event in our national history, save the Revolutionary War or the great Civil War, rivals in importance the

purchase of the Louisiana territory. It gave the United States the full control, from its source to its mouth, of that great national highway, the Mississippi River; it added to the public domain nearly nine hundred thousand square miles of productive territory, now inhabited by nearly fifteen millions of people; it caused the flags of France and Spain to be hauled down along our western border; it made the Pacific Ocean, rather than the Mississippi River, the western boundary of this great republic, thereby insuring our western frontier against invasion by any foreign power, and it cleared the way for the onward march of our people and our free institutions to the Pacific Coast.

The Revolutionary War made us a free and independent nation; the Louisiana purchase made the United States the dominant power on the western hemisphere. The undisputed possession which we thereby acquired of the great region on the west bank of the Mississippi River may have inspired the American people with that sense of responsibility for the well-being of all nations on the western hemisphere and with that confidence in their strength which led them, within twenty years after the territory was acquired, to assume that position of guardianship over the South American republics which they have since maintained. Whether that feeling of confidence in their strength was justifiable when the Monroe doctrine was declared, and whether the United States could have upheld it by force of arms at that early day against a strong European combination, we need not stop at this time to inquire. Fortunately the power to uphold it was not put to the test during the infancy of the republic, and, now that we have grown to lusty manhood, no foreign power, unless constrained by necessity to challenge our pretensions, will be apt to do so.

To those who look with pride upon the secure position which the United States now holds on the North American continent, it must be regarded as a fortunate circumstance that, at a time when the right of the United States under its

Constitution to acquire and govern foreign territory was not well established, the first step taken in the direction of territorial expansion was the purchase of the Louisiana territory. Most of the statesmen of that period as well as the common people, perceived at a glance the great benefits that would accrue to us as a nation by acquiring an outlet to the Gulf and at the same time an undisputed title to the great domain on our western border which extended across the continent to the Pacific Ocean. These desirable objects being within our grasp for a comparatively small sum, no considerable portion of the American people were disposed to look with favor upon a construction of the federal Constitution that would prevent their accomplishment. It is a fortunate circumstance that the proposal to buy a small part of the Louisiana territory near the mouth of the Mississippi River emanated from the leaders of the political party then in the ascendency, which insisted upon a strict construction of the federal Constitution, while those who opposed the purchase belonged to the party which was usually inclined to a liberal interpretation of that instrument. Such objections to the purchase, however, as the Federalists interposed seemed to have been inspired not by any serious doubts of the expediency of the purchase, but rather by a desire to embarrass their political opponents and deprive them of the credit of having settled by wise statesmanship the perplexing question concerning the navigation of the Mississippi River. This question challenged the attention of all people residing in the west and southwest, and in importance overshadowed all others in that section of the country. Probably there were some Federalists, who, with a view of strengthening their party in the western states and territories, would have been willing to unite with the people of that section in forcing a passageway to the Gulf, and would have preferred to acquire the port of Orleans by war rather than by a treaty involving an expenditure of fifteen millions of dollars; but the great body of thinking men who were not blinded by partisanship, doubtless saw in the offer of Napoleon to sell the entire terri-

tory to the United States an opportunity for national aggrandizement which no statesman of broad and enlightened views could afford to let pass. President Jefferson at least realized the full significance of the offer and to what extent the future welfare of the American people depended upon its prompt acceptance. It is well known that he doubted his power as chief magistrate to enter into such a treaty as Livingston and Monroe had negotiated with Napoleon for the purchase of the entire territory; but these doubts were either ignored or overcome. The instincts of the statesman dominated the narrower views of the lawyer, and he not only approved of the action which our ministers had taken without any precedent authority, but forced through Congress, with only a limited time for debate, an act approving the purchase, advising his friends, in substance, that the constitutional question should be treated with silence. For this action Jefferson has been criticised by his enemies, and not wholly without cause. It has been charged that he deliberately did an act which he supposed to be violative of the federal Constitution. We must remember, however, that many of Jefferson's political advisers believed that the Constitution conferred ample power to make the purchase, and whether it did or not was a question which was not then susceptible of accurate solution. Moreover, nations, like individuals, are sometimes compelled under stress of circumstances to act promptly and decide some questions solely on considerations of self-interest, or as one of Jefferson's biographers has observed, "Destiny, that goddess who loves nothing so much as irony, often leads the profoundest statesmen and the wisest philosophers to the point where the choice must be made betwixt a sound abstract doctrine and a sensible act inconsistent therewith." Of all American statesmen, Jefferson perhaps was the one who was the most inclined to regard the will of the majority as the higher law and the public welfare as the true guide to official action. It was natural, therefore, that his constitutional scruples should have been overcome by the knowledge that the great majority of the

American people favored the purchase of the Louisiana territory and that it would redound greatly to the benefit of his country. In point of fact, Jefferson's superficial view of his constitutional powers was erroneous. He did not transcend his authority as chief magistrate in consummating the treaty with France, so that, by following the instincts of the statesman rather than his opinion as a lawyer, he conferred inestimable benefits upon his country, for which posterity should ever be grateful.

It is quite probable that if any considerable number of the American people had failed to appreciate the great national benefits that would flow from extending our sovereignty over the entire Louisiana territory, or if there had been anything like an equal division of public sentiment concerning the expediency of the purchase, a controversy would have arisen over the power of the United States to acquire a foreign territory larger in extent than the original thirteen states under a treaty which substantially involved the admission of the purchased territory in the shape of new states into the union—which would have shaken the federal government to its foundation. Had such a controversy arisen, no one at this time can pretend to say what the decision would have been, nor what would have been its effect upon our subsequent growth and career as a nation. It would doubtless have been urged, as Chief Justice Taney in fact decided more than fifty years later in *Scott vs. Sandford*, 19 How. 393, 432, 446, that the clause of the federal Constitution giving Congress the power "to dispose of and make all needful rules and regulations respecting *the territory* or other property belonging to the United States . . . was intended to be confined to the territory which at that time belonged to or was claimed by the United States (namely, the Northwest territory) and was within their boundaries, as settled by the (existing) treaty with Great Britain"; that the clause in question had no reference whatever to territory which was afterwards to be acquired from a foreign government; and that no power

had been conferred by the Constitution upon the federal government "to establish or maintain colonies bordering on the United States or at a distance to be ruled and governed at its own pleasure, nor to enlarge its territorial limits in any way except by the admission of new states." Had arguments of this sort, backed by a strong public sentiment against the acquisition of the territory and by the earnest advocacy of either of the great political parties, been employed when the states were jealous of the authority of the federal government, and while the idea was widely prevalent that the Constitution was simply a league between sovereign states, and that its grants of power should be strictly construed—we cannot say now with any confidence what limitations might have been imposed by a construction at a very early day on the power of the United States to acquire and govern foreign territory, nor how seriously such limitations might have affected our future growth and prosperity. I do not imagine, however, that any construction which might have been placed upon the federal compact at that early day would have prevented the American people from taking possession eventually of the great region west of the Mississippi River, or from forcing a passageway to the Gulf. Written constitutions may hinder, but they cannot prevent the growth of a nation, nor suppress the natural propensities of a free, intelligent and enterprising race. It would have been a task more difficult than to dam the waters of the Mississippi River to prevent the American people from overflowing the country to the west of that river. The fertile lands of that region would have attracted thousands of American citizens, who would have settled thereon and founded free commonwealths, which in turn would have gravitated to and in the end become an integral part of our great federal union. The Louisiana territory in all probability would have shared the fate of Texas. The Emperor Napoleon probably foresaw this result in the near future, and was doubtless well aware that free access to the Gulf must be given to the United States, or it would be acquired by force. He acted wisely,

therefore, in selling the Louisiana territory to the United States, and the United States acted with greater wisdom in buying it. Indeed, time has demonstrated that President Jefferson displayed greater ability as a statesman and conferred more lasting benefits on the people of the United States, in making the purchase, than by any other single act in the course of his long political career. It is not too much to say that future generations will accord him more praise for adding the Louisiana territory to the domain of the United States than for any other of his official acts; although in his self-written obituary he does not mention it as one of the deeds that best entitled him to the gratitude of posterity.

It is hardly necessary to observe that the Louisiana purchase paved the way for all of those future acquisitions of foreign territory that have together made the United States the dominant power on the North American continent, and added immensely to its prestige and influence as a nation. It turned the minds of the American people to thoughts of expansion and gave them a vivid conception of a great republic extending from the Atlantic to the Pacific Ocean. The purchase in question determined, as it were, with the general consent of the American people, that the federal government has the power under the Constitution to acquire and hold foreign territory at least on this continent, which power has never since been seriously disputed by statesmen or jurists. It is true that the right to acquire foreign territory and govern it was challenged incidentally in a private suit which arose twenty-five years later after the United States had acquired the territory of Florida by a treaty with Spain. This treaty, like the one with France, provided that the inhabitants of the acquired territory should be incorporated into the union as soon as might be consistent with the principles of the federal Constitution and "admitted to the enjoyment of all the privileges, rights and immunities of citizens of the United States." (8 St. 256, 258.) When the right was thus challenged, the federal government rested upon a more secure foundation



than in 1903, and was a far more stately and imposing structure. It had in the meantime engaged in a foreign war of considerable magnitude and a strong national spirit had been aroused throughout the length and breadth of the entire country. Two states, Louisiana and Missouri, had already been carved out of the Louisiana territory and admitted into the federal union. The necessity of confederation and the benefits which had accrued from the creation of a national government were clearly perceived by all classes and the bond of union had become too strong to be easily broken. It was a forlorn hope, therefore, to obtain from any department of the government in the year 1828, when the case of *Insurance Company vs. Canter*, 1 Peters 511, was decided, a decision that the Constitution conferred on the United States no power to acquire and govern foreign territory and that the federal government had exceeded its just powers for a quarter of a century in exercising sovereignty over the Louisiana territory. In a few short and pithy sentences of profound import, Chief Justice Marshall declared that the Constitution conferred absolutely on the government of the union the power of making war and of making treaties; that, as a consequence, the United States possessed the power of acquiring territory either by conquest or treaty, and that the right to govern territory so acquired was undoubted and was due either to the fact that it was not within the jurisdiction of any particular state and could be governed in virtue of the provision of the Constitution giving Congress the power "to make all needful rules and regulations respecting the territory," or that the power to govern territory was the inevitable consequence of the right to acquire it. It is a curious circumstance showing how readily political views may be cast aside and that they are less persistent than the well-settled convictions of lawyers on legal questions, that Chief Justice Marshall, who was himself a pronounced Federalist, in this decision employed substantially the same argument which the followers of Jefferson had used in the Congress of the United States to secure

the ratification of the treaty with France when the Federalists were protesting against its ratification.

These propositions, which were determined by Chief Justice Marshall in *Insurance Company vs. Canter*, have ever since been accepted and acted upon as sound law by all departments of the government, and on the strength thereof an empire was acquired from Mexico at the conclusion of the Mexican War. They were expressly reaffirmed in the year 1856 in the case of *Scott vs. Sandford*, 19 How. 393, 447. Chief Justice Taney, in that celebrated case, did not find it necessary to challenge the power of the federal government to acquire foreign territory either by treaty or conquest. He conceded that the power to expand the territory of the United States by the admission of new states was plainly given by the Constitution, and that this power, as construed by all of the departments of government, had been held to authorize the acquisition of foreign territory, although it was not at the time fit for admission into the federal union. He maintained, however, that the right to govern such foreign territory as had been acquired by treaty or conquest subsequent to the adoption of the federal Constitution was not deducible from that provision of the Constitution empowering Congress "to make all needful rules and regulations respecting *the territory*," as had been suggested in the case of *Insurance Company vs. Canter*, but that the right to govern such territory followed by implication from the power to acquire it. He also said, *arguendo*, that when the United States acquired foreign territory it did so for the purpose of eventually creating states and admitting them into the union. The learned jurist was compelled to concede, however, that when foreign territory was acquired it rested with Congress to determine when it was fit for admission as a state; that this was a political question with which the judiciary have no concern, and that, in the meantime, Congress could exercise control over the territory, but not to the extent of prohibiting any citizen of the United States from going there with his property, even though such property consisted of slaves.

In these later days the question which has attracted most public attention and agitated the minds of statesmen and jurists is not whether the United States can acquire and hold foreign territory, but how and under what guaranties of life, liberty and property shall such territory, when acquired, be governed. On the one hand, we find learned jurists and statesmen who contend that as soon as territory is acquired by treaty from a foreign power the inhabitants of the ceded territory are within the protection of all the provisions of the bill of rights as contained in the federal Constitution and its amendments. On the other hand, we find some statesmen and jurists of great learning and ability who contend with equal zeal that some provisions of the federal Constitution and the bill of rights are applicable to the states only, and do not extend to the territories; and yet other jurists who, while admitting the paramount authority of the Constitution over all territory that has been incorporated into the United States, with the express or implied consent of both branches of the Congress of the United States, yet insist that the treaty-making power, consisting of the President and the Senate, may acquire, but that they cannot alone incorporate foreign territory into the United States. According to this latter view, it is possible for the federal government, in virtue of its treaty-making power, to acquire and govern foreign territory as appurtenant to the United States, although the inhabitants are not within the protecting ægis of the Constitution. It is also possible that they may remain in that state of suspense, subject to the control of Congress for an indefinite period, or until it sees fit to incorporate them into the federal union or grant them the protection of the federal Constitution.

It would be out of place in a paper of this nature to discuss or criticise either of these propositions, and it is not my purpose to do so. The controversy on these points is due in a large measure to a wide divergence of public opinion concerning the question whether it is wise for the American people to acquire and hold territory at a distance from the North Amer-

ican continent which is inhabited by a people not of the Anglo-Saxon race or lineage. All concede, or if they do not concede they are at least well aware, that if the policy of territorial expansion is further pursued we may acquire a sovereignty over people who are not fitted by experience or descent for the enjoyment of all the political rights secured to citizens of the United States by the federal Constitution. Those who favor the policy of territorial expansion are for this reason naturally anxious to formulate some view of the federal Constitution that will enable them to withhold for a time from the inhabitants of such territory as we have or may hereafter acquire certain constitutional rights which they are supposed to be unfitted at the present time to enjoy, while those who are opposed to the policy of expansion very naturally insist, as a reason why it should not be pursued, that, if pursued, all constitutional rights and privileges now granted to the citizens of the states must of necessity follow the flag and be transported to a soil not adapted to their growth and development. We must leave this question of national policy which has given rise to these conflicting views concerning the application of the federal Constitution to the territories, to be settled by the legislative department of the government, where it of right belongs.

When the question of national policy is finally determined, and it is to be hoped that it will be settled in a manner consistent with the honor and permanent welfare of the American people, the perplexing legal questions which have lately arisen concerning the interpretation of the Constitution and its applicability to the territories, will cease to retain their present interest and will become of an academic character.

No such constitutional questions as those last mentioned, which now agitate the public mind, appear to have been raised in connection with the purchase of the Louisiana territory, or if raised, they do not seem to have become a subject for judicial discussion and decision, although the purchase afforded abundant opportunity for their discussion, had the lawyers and

statesmen of that day been so inclined. The first act of Congress that was passed in relation to the Louisiana territory conferred on the President of the United States as extensive authority over the territory as had ever been exercised by the king of Spain. The act provided in broad terms that "all military, civil and judicial powers exercised by the officers of the existing government of the (territory) shall be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct." (2 St. 245.) This act remained in force only one year, when it was superseded by an act which divided the Louisiana purchase into two territories, the one termed the Territory of Orleans, now the State of Louisiana, and the other the District of Louisiana. (2 St. 283.) As might have been anticipated, the latter act deprived the President of very much of the arbitrary power that had been conferred upon him by the earlier enactment. It created courts at convenient points in both territories, to be presided over by persons learned in the law, for the administration of justice according to American methods. It established the right of trial by jury both in civil and criminal cases. It declared that all free male white persons who were housekeepers and had resided in the territory one year should be qualified to serve as grand or petit jurors in the courts of the territory; that the inhabitants of the territory should be entitled to the benefit of the writ of *habeas corpus*; that all offenses should be bailable except capital offenses where the proof was evident or the presumption great and that no cruel or unusual punishments should be inflicted. As respects the Territory of Orleans, it vested the legislative power in a governor to be appointed by the President and in thirteen of the most fit and discreet persons in the territory, who were to be appointed annually by the President from among those holding real estate therein, and who had resided in the territory at least one year, and who held no office of profit under the territory or the United States; while the legislative power for the District of Louisiana was vested in the governor and judges of the

Indiana Territory, to which territory the District of Louisiana was temporarily attached for all governmental and legislative purposes. Although the statute vested all legislative power throughout the Louisiana purchase in appointees of the President and denied to the people the right to enact laws, yet in the Territory of Orleans, where the population was comparatively dense, this right was denied for only fifteen months. At the end of that period the people of that territory were permitted to frame laws adapted to their wants, through a legislature of their own selection. (2 St. 322.) Moreover, while the legislative power was so withdrawn from the people and vested in appointees of the President, the statute by which it was withdrawn contained the provision, in substance, that no law enacted by such appointees of the executive should be inconsistent with the Constitution and laws of the United States or place any person under any restraint, burden or disability on account of his religious opinions, and that all laws which might be enacted should be reported to the President of the United States and laid before Congress, and if disapproved by that body should thenceforth have no force and effect. (2 St. 284.) In that part of the purchase designated as the District of Louisiana, legislative power was withheld from the people and vested in appointees of the executive until June 4, 1812. (2 St. 743.) This region, first termed the District of Louisiana, later the Territory of Louisiana (2 St. 331), and still later the Territory of Missouri (2 St. 743), out of which fourteen states and parts of states have since been carved, was of such vast extent and so sparsely settled, up to the year 1812, that a legislature could not well be elected by a popular vote or convened at any place within the territory which was convenient of access. The inhabitants of the territory seem to have recognized this fact and to have been content with the situation or too busy with their private affairs to desire to engage in the work of legislation, since no complaint was made because the legislative and executive powers were vested in the same

hands. In all probability the establishment of courts for the administration of justice, the safeguards that had been provided against the exercise of arbitrary power in the original act for the government of the Louisiana purchase, the provision found in that act that no law should be enacted imposing a disability upon anyone on account of his religious opinions, or that was in violation of the Constitution or laws of the United States, and the provision reserving to Congress the power to annul any law that might be passed, all of which provisions remained in force, were regarded as affording adequate protection, for the time being, to life, liberty and property. The act containing these provisions, which was passed as early as March 26, 1804 (2 St. 283), certainly gave to a large population then residing within the limits of the Louisiana purchase, particularly in the Territory of Orleans, an amount of liberty and a measure of protection against arbitrary rule such as they had never before enjoyed and in all probability could not have obtained, save by revolution, had they remained subjects of a foreign power. It was a legislative measure which was intended to fulfil, as far as could be done, the obligation that had been assumed by the United States in its treaty with France (an obligation which the great Napoleon had insisted should be assumed), that the inhabitants of the ceded territory should be admitted, as soon as possible, to the "enjoyment of all the rights, advantages and immunities of citizens of the United States." From and after the year 1812, the inhabitants of the Louisiana purchase were granted practically the same rights of self-government and the same guaranties against the exercise of arbitrary power as were enjoyed at the time by other citizens of the United States, and these rights they continued to enjoy until the territory was divided into states and incorporated into the federal union on a full equality with other states. The Territory of Orleans was admitted into the federal union under the name of the State of Louisiana on April 8, 1812. (2 St. 701.) Two months later (on June 4, 1812) a territorial government was created

for the residue of the purchase under the name of the Territory of Missouri. (2 St. 743.) The act creating a government for the Territory of Missouri was the model in general accordance with which all subsequent acts were drawn for the government of the several territories that were afterward carved out of the Louisiana purchase. That act vested the executive power in a governor to be appointed by the President of the United States, the judicial power in a superior court consisting of three judges, also to be appointed by the President, and in inferior courts and justices of the peace, while the legislative power was vested in a general assembly consisting of the governor, a legislative council of nine members and a house of representatives, the latter to be elected by the people. The general assembly was authorized "to make laws in all cases, both civil and criminal, for the good government of the people of said territory, not repugnant to or inconsistent with the Constitution and laws of the United States." It was given power "to establish inferior courts and to prescribe their jurisdiction and duties"; also, to define the powers and duties of justices of the peace and other civil officers in the territory, to regulate and fix the fees of office and to ascertain and provide for the payment of the same. The governor of the territory was enjoined by the act to see that all laws were faithfully executed and was given the power to grant pardons for offenses against the territory and to veto such acts of the general assembly as did not meet with his approval. The act further provided that all free male white persons of the age of twenty-one years who had resided one year in the territory should have the right to vote not only for members of the general assembly, but for a delegate to represent the people in the Congress of the United States, and that they should be qualified to hold any office of honor, trust or profit under the United States or under said territory, and that they should likewise be qualified to serve as grand or petit jurors in the courts of the territory. The act further declared that the people should always be entitled to a proportionate representa-



tion in the general assembly of the territory; that judicial proceedings should be conducted "according to the common law and the laws and usages in force in said territory"; that the people of the territory should be entitled to the benefit of the writ of *habeas corpus*; that in criminal cases trials should be by a jury of good and lawful men of the vicinage; that all crimes should be bailable except capital offenses; that no cruel or unusual punishment should be inflicted; that no man should be deprived of his life, liberty or property "but by the judgment of his peers and the law of the land"; that no *ex post facto* law or law impairing the obligation of contracts should be passed; and that no law should be enacted laying any person under any restraint, burden or disability on account of his religious opinions, profession or mode of worship. By the same act Congress declared that "religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be encouraged and provided for from the public lands of the United States in said territory in such manner as Congress may deem expedient." (2 St. 747.)

The obligation which the Congress of the United States thus assumed by the Act of June 4, 1812, to foster the cause of education and good government within the Louisiana purchase, it afterwards fully discharged. The sixteenth section in each township of surveyed public lands was granted to the State of Louisiana for the support of public schools, and an entire township, or thirty-six sections, for the establishment of a seminary of learning. (2 St. 394.) A similar grant was made to the State of Missouri, together with a grant of four sections of land for the establishment of a seat of government. (3 St. 547.) The states of Arkansas and Iowa in like manner received from the federal government the sixteenth section in each township for the support of public schools, and two entire townships, or seventy-two sections, for the establishment of a seminary or state university. (5 St. 58, 789.)

In the other states that were carved out of the purchase,

the thirty-sixth section in each township, as well as the sixteenth section, was set apart for the benefit of public schools, and seventy-two sections in each state for the maintenance of a state university. The federal statutes disclose many other grants of lands, almost too numerous to mention, that have been made from time to time, either to aid in the erection of public buildings or to stimulate works of internal improvement, to say nothing of those munificent grants amounting to many millions of acres of the most productive land on the continent, that have been made to states and corporations to aid in the construction of railroads. It is not too much to say that there are few railroads now in operation within the Louisiana purchase but owe their existence in whole, or in part, to the generous if not far-sighted action of the federal government. The latest gift made by the government for the benefit of the inhabitants of the Louisiana purchase is that contained in the Act of June 17, 1902 (32 St. 388), whereby the proceeds of the sale of all public lands, save such part thereof as has heretofore been devoted to educational purposes, have been reserved and set apart as a fund to be used in the construction of irrigation works for the reclamation of arid and semi-arid lands.

In the light of all federal legislation affecting the Louisiana territory, no one can well deny that the United States dealt generously and wisely with the inhabitants of the territory so long as they remained under a territorial form of government. It has aided them by lavish grants of land and money in transforming what were once regarded as barren wastes into wealthy and prosperous states. It has been equally generous in according to the people of the Louisiana purchase such political rights and privileges as were best calculated to promote their happiness and well-being. The main object of written constitutions is to secure to all men equal rights, privileges and opportunities under the law and to provide adequate protection for life, liberty and property. The best protection that can be afforded to life, liberty and property is a guaranty by the sov-

ereign authority that no man shall be deprived of either without due process of law; that he shall be entitled to a trial by jury when either life, liberty or property is involved; to the benefit of the writ of *habeas corpus* and to freedom of opinion in matters of religion. The Congress of the United States not only permitted the inhabitants of the Louisiana purchase to enact laws adapted to their wants, but at a very early day it expressly extended to them these constitutional guaranties. It may be that without such an *express* grant from the Congress of the United States the rights in question, or some of them, belonged to the inhabitants of the territory as soon as it was ceded to the United States in virtue of the provisions of the federal Constitution, although the recent decisions of the Supreme Court leave us somewhat in doubt of the extent to which the guaranties of the federal Constitution and the limitations upon legislative power therein contained are applicable to the territories. If the rights in question were not secured to them by that instrument, it may be that some of them were secured by a species of constitutional common law prevailing throughout the United States, its territories and all of its dependencies. It is well known that during recent years some learned judges, when they have felt the pressure of the argument that it was never intended that absolute power should ever be exercised by our government or any of its departments, have strongly intimated that there are certain "inherent and fundamental principles for the protection of the individual" which are binding upon all of the departments of the federal government at all times and in all places subject to its jurisdiction, and are deducible from the history of the Anglo-Saxon race and the spirit of our organic law rather than from its letter. *Downes vs. Bidwell*, 182 U. S. 244, 280, 291; *Mormon Church vs. United States*, 136 U. S. 1, 44; *Knowlton vs. Moore*, 178 U. S. 41, 109. Be this as it may, if the purchased territory was at any time merely a colony or an appurtenant domain with which the Congress of the United States could deal at its mere pleasure without ref-

erence to any constitutional provisions limiting its power, it never saw fit so to regard it or to exercise such authority. Its legislation with respect to the territory shows from the beginning a manifest desire to invest the inhabitants of the territory with all the rights and privileges which other citizens of the United States at the time enjoyed, and to bestow on them all the blessings incident to a constitutional form of government.

The states that have been carved out of the Louisiana purchase have, without exception, borrowed their constitutions, codes of municipal laws and local institutions from the older states, or, to speak more accurately, the people from the older states who migrated across the Mississippi, and there founded new commonwealths, brought with them from the older states civil polities with which they were entirely familiar, and re-established them without difficulty on what had previously been foreign soil. The result is that institutional growth and development in the Louisiana purchase has always kept pace with the growth of population, and both have been exceedingly rapid. As early as the year 1812, Congress enacted that all judicial proceedings within the Louisiana territory, which included at that time all of the purchase except the State of Louisiana, should be conducted according to the common law. The common law has accordingly prevailed, and still prevails, save as it has been modified by local statutes, in all of the purchase states except the State of Louisiana. The territory embraced by the Louisiana purchase is larger by fifty-four thousand square miles than the original thirteen states or colonies; it is said to be more than seven times the size of Great Britain and Ireland, and larger than Great Britain, Germany, France, Spain, Portugal and Italy combined. When we reflect that as one of the immediate results of the purchase made one hundred years ago, republican institutions were planted throughout this vast region and the blessings of liberty secured to all of its present and future inhabitants, we may well assert that history affords no other instance where objects of such supreme importance to

the well-being of so many millions of people, have been attained, without bloodshed, by wise statesmanship and a small expenditure of treasure.

The purchase of the Louisiana territory not only served to extend a liberal and constitutional form of government over a large section of the North American continent, but viewed from a material standpoint, it has added immensely to the wealth and productive capacity of the United States. Some of the statistics showing the productive capacity of the purchase states I venture to state. The value of the agricultural products of these states, including only wheat, corn, oats, barley, rye, hay and potatoes is said to have been a little more than eight hundred and sixty-six millions of dollars for the year 1903. The value of the wool product of the same states for the same year is said to have been sixteen millions of dollars, or one million dollars more than the cost of the entire territory. If to the value of these products be added all other agricultural products, including the value of animals annually turned into provisions, it is estimated that the products of the purchase states for the year 1903 amounted in value to more than one hundred times the original cost of the territory, while their taxable wealth is now more than four hundred times the purchase money. If well tilled, these states would doubtless support more than twelve times their present population, since various European states, having no greater area than the Louisiana purchase and no greater fertility, now support a population of more than two hundred millions of people. It was not, however, the productive capacity of the territory, nor the wealth it might be made to yield, which induced its purchase, for neither Jefferson, nor Livingston, nor any other statesman who was immediately concerned in negotiating the purchase, nor any of the French statesmen, appears to have had an adequate conception of its productive capacity, or of the wealth that it would eventually produce. Talleyrand, in one of his interviews with Livingston when the latter proposed the purchase of New

Orleans and a narrow strip of land on the east bank of the Mississippi River, is said to have remarked in substance that if France sold New Orleans to the United States, the rest of the Louisiana territory would be of comparatively little value. Madison also is on record as having expressed the opinion that it would be unwise for the United States to dilute its population by encouraging immigration to the *barren* country west of the Mississippi River. Indeed, the idea seems to have been widely prevalent, until some time after the Lewis and Clark expedition and the Pike explorations, that much of the country to the west of the Mississippi River was dry and barren, or, at least, that it was not well adapted to settlement by an agricultural people. Our statesmen, however, were mistaken in this respect and builded more wisely than they knew. They believed that it was necessary to quiet the agitation in the west concerning the navigation of the Mississippi River, which was liable at any moment to occasion a war with France or Spain, by acquiring the control of the mouth of the Mississippi River and the right to navigate it without let or hindrance. To accomplish this object, they bent all their energies and exhausted the arts of diplomacy. All other advantages incident to the purchase were but dimly foreseen, or, if foreseen, were regarded and treated as of a secondary character. But in the light of subsequent events we now know that, however valuable the right to navigate the Mississippi River may have been, it was of no greater importance to the United States than the acquisition of the fertile region to the west of that river, out of which the great agricultural states of the West and Northwest have since been carved. These states, now inhabited by an industrious, energetic and homogeneous population, form the most productive, if not the fairest section, of our great federal union, and in the years to come will, in a large measure, direct its policy and sway its destinies. I am aware that in some sections of our country, particularly in the Eastern States, persons may be found who are disposed to look with distrust upon the inhabitants of some of the purchase states.

In certain quarters or among certain classes the impression prevails that their views on some social, political and economic questions are unsound; that they indulge to some extent in rash and ill-advised legislation which injuriously affects the public welfare; that they are visionary, impetuous and headstrong, and that, if given their way, they would at times loosen the wholesome restraints of law and weaken the authority of government. It would ill become me to say how far, if at all, these impressions are well founded. With equal reason, perhaps, the people of the extreme West might say to their brethren of the East, You are too timid and conservative; you are too much absorbed in caring for your material interests; you hesitate to attack abuses which you acknowledge and of which you complain, through fear of affecting property rights or disturbing the existing order of things, or interfering with the operation of what you are pleased to term natural laws—forgetting, apparently, that it is not the sole function of government to afford protection to property, but that its duty is to secure to the citizen other rights that are equally sacred and equally entitled to protection. The people of the extreme West have no such fears. They have the courage of their convictions and never hesitate to give expression to their views or to act through fear of consequences. It may be that they are at times hasty in forming their judgments on important questions and too strenuous in carrying them into execution and that they are occasionally guilty of excesses; but this is because they are a liberty-loving people and deeply resent injustice and all forms of wrong and oppression. The inhabitants of the purchase states can be safely trusted in the future as in the past to maintain the supremacy of law, a constitutional form of government and a high state of civilization throughout the whole of that great region which our ancestors acquired from France more than one hundred years ago. The inheritance is safe in their hands and they will preserve it for their descendants and the millions who will hereafter occupy it. The record of the Louisiana purchase

for the last century, thanks to the energy of its inhabitants, the invention of the steamboat and the locomotive and the operations of a beneficent government, is one of marvelous progress and development. History affords no instance where human energy and wise laws have been productive of greater results. We look forward to the future with supreme confidence, knowing that it promises greater growth and more abundant prosperity if we remain loyal to the principles of the federal Constitution, if we maintain a high standard of virtue and intelligence and adhere to simple republican habits of thought and modes of life.



## THE ALASKAN BOUNDARY CASE.

BY

J. M. DICKINSON,  
OF CHICAGO, ILLINOIS.

The invitation to me to write a paper for this occasion was coupled with the suggestion that it be upon the Alaskan Boundary Case. So many stirring events have occurred since that decision that not only the general public, but doubtless the profession, have lost much of the interest that it aroused less than a year ago. If I am dealing with a subject that may seem stale and unprofitable, I beg that you will visit the responsibility upon the governing authorities of the Association and not upon a loyal member who felt it his duty to contribute so far as he could toward carrying out the designated programme. Within the limits of a paper like this it will be impossible to give more than a general view of the salient points, and my endeavor shall be to avail myself of this opportunity to put into accessible and permanent form such features of the case as the profession would probably be interested in. The record and arguments fill seven volumes and three portfolios of maps, and it would be a work of very great labor for anyone to acquire for himself anything like a comprehensive understanding of what was involved.

### HISTORICAL INTRODUCTION.

The northwest coast of America was the last seaboard of the continent to be occupied by Americans and Europeans. In 1728 Behring discovered the strait between America and Asia, and reached the continent of North America in latitude 65° north. In 1778 the Russians were established throughout the Aleutian Islands. On July 9, 1799, the Czar issued an ukase which granted to the Russian-American Company a trade monopoly and exclusive occupation of

the northwest coast of America down to the 55th parallel. This company was the representative in that region of the Russian government and exercised full governmental powers. From establishments on the islands it extended its trade with the Indians along the continental shore. American vessels, in constantly increasing numbers from 1790, extended their trading into that region and greatly impaired the value of the monopoly that had been granted by the Russian government. The Americans disposed of their furs at Canton and thus secured a great advantage over the Russians, who were not permitted to enter that port. It was charged that the Americans sold liquor and firearms to the natives, which made them both insubordinate and dangerous. Representations were made by Russia to the government of the United States in regard to this "illicit traffic" in 1808 and 1810. After the war of 1812 American vessels increased their activity. In 1821, and mainly on account of American traders, another ukase was issued, addressed "unto all men," granting to Russian subjects all commercial and fishing rights along "the whole of the northwest coast of America from Behring Strait to the 51° north latitude." All foreign vessels were prohibited from approaching within one hundred miles of that coast, and were interdicted to carry on any traffic with the natives "of the islands and of the northwest coast of America in the whole extent here above mentioned."

In the same year a monopoly of commerce and trade along this whole coast was given to the Russian-American Company, extending the former grant from the 55th down to the 51st parallel. The United States and Great Britain were formally notified by Russia of this action. At that time Great Britain had substantially no trade on the northwest coast of America, but the inhibition as to navigating within one hundred miles of this coast, and of the Russian coasts on the west of the Pacific, thus making, in effect a *mare clausum* of the northern part of the Pacific Ocean, at once alarmed Great Britain. Two months

and a half after the official notification Great Britain protested against the assertion of sovereignty by Russia over such a wide extent of ocean and reserved the question as to Russia's claim of ownership of the northwest coast.

On February 25, 1822, the United States government protested against the assertion, both as to maritime and territorial rights. Each government disclosed a purpose to assert in behalf of its citizens the right of trade on the northwest coast, and denied the sovereignty of Russia over those regions. Negotiations were begun between Russia and the United States on the one hand and Russia and Great Britain on the other hand in 1822, looking to an adjustment of these questions. In these negotiations both Great Britain and the United States asserted title to portions of the northwest coast which had been brought into controversy. Inasmuch as the same questions were involved, at the suggestion of the Russian government, the negotiations, both in behalf of Great Britain and of the United States, were carried on at St. Petersburg. It was even suggested that the interests and claims of the three powers be adjusted by a joint convention.

In a letter from Mr. Adams to Mr. Rush, July 22, 1823, an assertion in line with the declaration of President Monroe in his message to Congress in December of the same year was made as follows :

“ It is not imaginable that, in the present condition of the world, any European nation should entertain the project of settling a colony on the northwest coast of America.”

When this was brought to the attention of Great Britain, that government announced its intention of proceeding separately in its negotiations with Russia.

The negotiations between Russia and the United States terminated in a treaty signed April 5, 1824, by which Russia withdrew her pretensions with respect to navigating the Great Ocean, and it was agreed that Russia would make no settlements south of  $54^{\circ} 40'$  of north latitude on the northwest coast of America, and that the United States would make none north of that degree.

The negotiations between Great Britain and Russia eventuated in a treaty signed February 16, 1825, in which Russia withdrew her pretensions as to exclusive right of navigation, and a territorial line between Russia and Great Britain was established, in respect of the islands and northwest coast of America.

After the treaty of 1825 went into effect Russia asserted without question sovereignty over all the northwest coast of America north of the parallel  $54^{\circ} 40'$ , exercised jurisdiction over the natives thereof, made surveys and utilized the country so far as it then appeared to be capable of being occupied. In 1826, and from time to time down to the American purchase, it published official maps laying down the territorial boundary between Russia and Great Britain substantially as claimed by the United States in their controversy with Great Britain. The governmental headquarters were at New Archangel, now known as Sitka, and frequent expeditions were sent to the heads of Lynn Canal and Taku Inlet.

In 1839 the Russian-American Company and the Hudson's Bay Company, with full knowledge and consent upon the part of their respective governments, entered into a contract by which there was leased to the Hudson's Bay Company substantially all of that part of the northwest coast of America drawn in controversy between the United States and Great Britain, and certainly all that part of it bordering the heads of the interior waters, such as Lynn Canal. The Hudson's Bay Company, with the knowledge and consent of Great Britain, remained in possession of this territory as the tenant of Russia, down to the time that it was ceded by Russia to the United States, and surrendered it when the United States took formal possession.

Shortly after the treaty of 1825 and down to the time of the American purchase, there were issued, from time to time, various official maps by Great Britain, laying down the boundary line between Great Britain and Russia, in such a way as to give Russia the heads of all the inlets and interior waters,

and substantially where the United States contended it should be. Great Britain never, prior to the American purchase, set up any pretension to ownership of any part of those coasts, and never exercised any civil or military jurisdiction in any way over any part of it.

By a convention entered into between the United States and Russia, concluded March 30, 1867, the United States purchased from Russia her title to all the territory which had been confirmed in Russia by her treaty with Great Britain in 1825, paying the sum of \$7,200,000 therefor. The formal transfer of the territory was effected at Sitka on October 18, 1867, and on the same day the United States revenue vessel, the Lincoln, took formal possession at the head of Lynn Canal.

When Mr. Sumner made his speech urging the ratification of the treaty, he used a map which had been given to him by the representative of the Russian government, and which showed the possessions claimed by Russia, indicated by a boundary line between Russia and Great Britain laid down substantially as subsequently insisted upon by the United States. This map is now the property of Harvard University, having been presented to it by Mr. Sumner.

Shortly thereafter the United States published a large number of official maps laying down the line in the same way, and these, without doubt, came to the attention of Great Britain. Great Britain continued to publish official maps showing the line in substantially the same way down to the year 1898. The cartographers of the world generally, in their publications, beginning shortly after 1830 and continuing down to the time this controversy arose, indicated the boundary line in the same way. From the day they took possession the United States, without question, constantly asserted and exercised jurisdiction over all of that coast and the adjacent waters. Their revenue cutters and navy all the time dominated those waters. No other country ever questioned their sovereignty. The various Indian tribes inhabiting the coast were brought under their jurisdiction, and understood that they were under the

sovereignty of America. Frequent surveys were made at the heads of all the waters in question. In 1880 all foreign vessels were forbidden to unload at the head of Lynn Canal, and in 1890 a collector of customs was established there. In 1884 the civil government of Alaska was extended to that territory, and the United States Courts and their officers exercised unquestioned jurisdiction over it. The records of the Department of Justice show particular instances, from 1887 to 1894 inclusive, of persons proceeded against criminally for acts done at the head of Lynn Canal. In 1880 and in 1890 a census was taken of the inhabitants of that territory, and a post office was established near the head of Lynn Canal in 1882. Various other acts of government too numerous to mention, and all of them unchallenged, demonstrated that the United States, although they had not penetrated into the mountainous interior, were in full exercise of sovereignty over all the canals, inlets and coasts.

On account of the development of gold deposits in the Cassiar region, the trade of the Stikine River had grown to such proportions as to impress the governments of the United States and Great Britain with the importance of establishing the boundary line.

In 1872, which was forty-seven years after the treaty between Great Britain and Russia and five years after the United States had taken possession at the head of Lynn Canal, a correspondence began, at the instance of the Legislative Assembly of British Columbia, suggesting that the boundary line was not laid down in the treaty of 1825 with sufficient definiteness "to render it readily traceable on the ground" and that steps be taken to establish it. These negotiations, which, on the part of the United States, were conducted by Secretary Fish, continued until 1876, but no suggestion was ever made in any of the correspondence that Great Britain claimed any part of the canals or inlets north of Portland Canal, or any part of the coasts bordering them. On the contrary, it was treated as an accepted fact that the line should

be drawn in the interior, as suggested by Secretary Fish, across the Iskoot, Stikine, Taku, Islecat and Chilkat Rivers in such a way as to make it impossible that, at that time, anyone contemplated that it would traverse any of the arms or inlets of the ocean so as to give any part of the coast, or any ports, to Great Britain.

No survey was made then on account of the cost, which was considered as prohibitory. There was a survey on the Stikine River and the adoption of a provisional boundary line in 1878.

The correspondence conclusively shows that down to that time both governments treated the question upon the assumption that the Stikine and the other rivers were crossed by the boundary line, and that it in any event must be drawn around the heads of all of the bays and inlets.

On account of the difficulties in surveying the boundary arising from the mountainous and inaccessible character of the country, an informal unofficial conference took place in Washington between William H. Dall, of the Smithsonian Institution, and G. M. Dawson, of the Geological Survey of Canada. In their correspondence in 1888 Mr. Dawson advanced a theory as to running the line which involved the essence of that insisted on by Great Britain before the tribunal, but he did not put it forward in behalf of the government, and it was not at that time in any way adopted or urged by the British government. It was afterwards asserted by Lord Lansdowne, in a letter of August 18, 1902, that it was accepted as embodying the Canadian view, and in the British case that it was put forward by Mr. Dawson as representing Her Majesty's government as "the contention that the territories surrounding the head of Lynn Canal were British," but the record did not bear out either of these claims.

On July 22, 1892, a treaty was made between the United States and Great Britain providing for a survey "with a view to the ascertainment of the facts and data necessary to the permanent delimitation of said boundary line in accordance with the spirit and intent of the existing treaties in regard to

it between Great Britain and Russia and between the United States and Russia." The high contracting parties agreed as soon as practicable after the report or reports of the commissioners "to consider and establish the boundary line in question." Joint surveys were made, and a joint report was submitted December 31, 1895, but it contained no recommendation for a settlement.

In 1896 gold was discovered in the Yukon territory and there was an immense influx to the Klondike by water to the head of Lynn Canal and thence over the passes into British territory. The head of Lynn Canal, formerly but little thought of, on account of its harbors being the natural gateways to the gold regions, at once became of immense importance. It was not until after the Klondike rush began that any question was raised officially as to the sovereignty of the United States over those waters and coasts. As late as February 11, 1898, during a debate in the Canadian House of Commons, the Minister of the Interior, the Hon. Clifford Sifton, the question as to the ownership of the land about the head of Lynn Canal being under discussion, said that Skagway and Dyea had been in the undisputed possession of the United States for some time past, and that no protests had been made against such occupancy. On February 16, 1898, Sir Wilfred Laurier, in the Canadian House of Commons, said that Dyea and Skagway have "been in the possession of the United States ever since they acquired this country from the Russian government in 1867, and, so far as my information goes, I am not aware that any protest has ever been raised by any government against the occupation of Dyea and Skagway by the United States." On March 7, 1898, he said:

" . . . But if we had adopted the route by the Lynn Canal, that is to say, had chosen to build a railway from Dyea by the Chilkat Pass up to the waters of the Yukon, we would have to place the ocean terminus of the railway upon what is now American territory." . . . "The fact remains that from time immemorial Dyea was in possession of the Russians, and in 1867 it passed into the hands of the Americans, and it



has been held in their hands ever since." . . . So far as I am aware no protest has ever been entered against the occupation of Dyea by the American authorities."

On February 23, 1898, Sir Julian Pauncefote, in a communication to the Secretary of State, made by the direction of the Marquis of Salisbury for the purpose of having a settlement of the boundary line, said :

" The great traffic which is now attracted to the valley of the Yukon in the northwest territory by the recent discovery of gold in that region finds its way there from the coast, principally through certain passes at the head of the Lynn Canal, and it has become more important than ever for jurisdictional purposes that the boundary, especially in that particular locality, should be ascertained and defined.

Her Majesty's government, therefore, propose that the determination of the coast line of the boundary south of Mt. St. Elias should at once be referred to three commissioners (who should be jurists of high standing), one to be appointed by each government, and a third by an independent power. It is suggested further that the commission should proceed at once to fix the frontier at the head of the inlets through which the traffic for the Yukon Valley enters, continuing subsequently with the remaining strip or line of coast."

Thus he, at that date, virtually conceded that Great Britain did not claim that the line ran across the inlets and that it must be fixed " at the head of the inlets."

As there was a failure to fix the boundary under the treaty of 1892 and the surveys made in pursuance of it, another treaty was entered into by which a Joint High Commission was constituted, which met in 1898 and 1899. Before this commission, and for the first time, Great Britain put forward an interpretation of the treaty of 1825, which would make the boundary line run essentially different from anything ever shown upon any Russian, British or United States map, and so as to put into British territory all of the heads of the important inlets and every desirable and safe harbor and anchorage from the mouth of Portland Channel to Yakutat Bay, and much of the mining territory of the

Porcupine, Berners Bay, Juneau, Snettisham, Sumdum, Windham Bay and Unuk River districts, whose mineral wealth for twenty years had been without any question exploited by citizens of the United States. It also included the towns of Pyramid Harbor, Haines, Dyea and Skagway, all of them situated where the United States had exercised undisputed sovereignty since 1867. This claim was so extravagant that the United States members of the Joint High Commission declined to proceed further.

The question became more and more acute. It was manifest that the friendly relations between the two governments might sustain a lesion if it should not be settled, and that another treaty would be necessary.

#### SIGNING AND RATIFICATION OF CONVENTION OF 1903.

On January 24, 1903, at Washington, a treaty was signed between the United States and Great Britain, and the ratifications of the two governments were exchanged in the city of Washington on the third day of March, 1903.

#### THE TRIBUNAL.

It was provided in Article I that a tribunal should be immediately appointed to consider and decide certain questions, that it should consist of six impartial jurists of repute, who should consider judicially the questions submitted, each having first subscribed an oath to consider impartially the arguments and evidence and decide thereupon according to his true judgment. Three members were to be appointed by the President of the United States and three by His Britannic Majesty, and all questions were to be decided by a majority of the six.

There were appointed on behalf of the United States, Hon. Elihu Root, Secretary of War, Hon. Henry Cabot Lodge, of Massachusetts, and Hon. George Turner, of the State of Washington, and on behalf of Great Britain, the Lord Chief Justice of England, His Honor Sir Louis Aimable

Jetté, K. C. M. G., Lieutenant Governor of the Province of Quebec, and the Hon. John Douglass Armour, Judge of the Supreme Court of Canada.

On July 11, 1903, the Hon. John Douglass Armour died in London, and on July 28, 1903, Mr. A. B. Aylesworth, K. C., of Toronto, was appointed in his place.

#### THE AGENTS.

It was provided that each of the high contracting parties should name one person to attend the tribunal as its agent. Hon. John W. Foster, of Washington, D. C., was appointed agent of the United States, and Hon. Clifford Sifton, K. C., Minister of the Interior in the cabinet of the Dominion of Canada, was appointed agent of Great Britain.

#### THE PROCEDURE.

It was provided that the written or printed case of each party, accompanied by all the evidence relied on to sustain it, should be delivered in duplicate to each member of the tribunal and to the agent of the other party, within two months from March 3, 1903, that within the next two months either party might in like manner deliver a counter case and additional evidence in reply, the power being vested in the tribunal to extend the last mentioned period if it should become necessary by reason of special difficulties arising in the procuring of such additional proof. The tribunal could require the exhibition of documents relied on by a party, and of evidence pertinent to the case which appeared to be in the possession of a party.

Within two months from the expiration of the time limited for filing the counter case, it was the duty of each party to deliver in duplicate to each member of the tribunal, and to the agent of the other party, a written or printed argument showing the points and referring to the evidence relied on, and either party could support the same before the tribunal by oral argument.

The tribunal was to assemble for the first meeting at London as soon as practicable after receiving the commissions, and was authorized to fix the times and places of all subsequent meetings.

It was agreed by diplomatic correspondence that it would be regarded as a compliance with the convention if the cases and counter cases should be presented on the day fixed in London and Washington to the embassies of the respective governments to be forwarded without a formal meeting of the tribunal at London. Great Britain asked an extension of time for the filing of the cases, but this was declined.

Inasmuch as the 3d of May fell upon Sunday, it was agreed that the cases should be delivered on May 2d, but in order to catch the Saturday's steamers it was subsequently agreed that the delivery should be on May 1st. Mr. Choate was authorized by Mr. Hay to receive the British case in London for the American members of the tribunal and the American agent.

On May 15th the British agent wrote to the American agent that it would be impossible to prepare the British counter case within two months and suggested an extension of two months. This was declined on the ground that the American members of the tribunal said that it was impossible to consent because of a contemplated special session of Congress. It was not considered desirable that the Secretary of War and Senator Lodge should be out of the country during such session. This declination was by cablegram on May 25, 1903. On May 29th a seemingly retaliatory step was taken which foreboded serious complications. This was a request on the part of Great Britain for the production of practically all of the documents referred to in the United States case, with the statement that the British agent could examine them in Washington or make arrangements to photograph the originals. This called forth a sharp reply from Mr. Hay, in which he said:

"The list of papers inclosed with your first note embraces documents all of which have been textually set forth in the

case of the United States, many of which are likewise printed in full in the British case without any material variation, and the originals of some of which should exist in the British archives. The documents called for in your second note are likewise textually set forth in the case of the United States. They consist not only of copies of official papers certified to by the chief officer of the respective departments of the government, but of extracts from official printed publications and from books accessible to the general public. It is suggested that such a sweeping request would hardly be approved by the tribunal.

“The treaty does not appear to provide for either the production or examination of original papers by the agent of the other party upon his own request, nor for permission to photograph any papers. Although no reason is given in justification of the unusual request of the British agent, the United States is desirous of avoiding all unnecessary delay and of affording every proper opportunity for verifying anything relied upon by it in its case. I take pleasure, therefore, in assuring you that the British agent, or a representative duly authorized by him, will be given full opportunity to examine and verify the originals in the exclusive possession of this government of anything contained in the case of the United States, provided that no delay is thereby caused either in the delivery of the counter case or of the printed argument, or in the commencement of the oral argument.

“I beg to add that it is the intention of the agent of the United States to take to London the originals or certified copies of all documents and papers contained in the case and counter case of the United States, and to be prepared to produce them at the request of the British agent approved by the tribunal.”

Sir M. H. Herbert replied :

“I have now received a telegram from the Marquis of Lansdowne stating that His Majesty's government are not aware that any precedent exists for coupling the production of original documents with any condition such as that laid down by the United States government.

“The condition, moreover, in the opinion of His Majesty's government amounts to a refusal, as, without an extension of time, it is practically impossible to examine large numbers of documents and to embody the result.

"Both in private litigation and in international arbitrations the right to inspect has never been questioned, and His Majesty's government cannot, by accepting conditions, cast doubt on the existence of this right and thus establish a precedent which might prove a serious bar to a resort to arbitration.

"The originals in Russian, of which only translations are given, form a great proportion of the documents which it is desired to inspect. His Majesty's government consider that they have obviously a right to compare the originals with these translations.

"The description which has been given of other documents has not been sufficient for the purpose of tracing copies in England.

"His Majesty's government consider that in cases where certified extracts are given, they have clearly the right to see the whole documents so as to satisfy themselves that nothing material is contained in the omitted portions.

"His Majesty's government hope that on further consideration the United States government will agree unconditionally to their request, so that it may be possible to avoid the necessity of calling a special meeting of the tribunal to consider the matter.

"An application for the extension of time is expressly contemplated in the convention, and, unless this application is acceded to, it will be impossible to present fully the reply to the United States case. His Majesty's government cannot believe that the United States government will be prevented through any question of personal convenience from favorably considering the request, the refusal of which would entail the presentation of the British counter case in an incomplete form, as unsatisfactory to His Majesty's government as to the tribunal.

"His Majesty's government would accordingly be glad to learn that the United States government agree to the application of the British agent, whose request for an extension of time they strongly support."

This fully discloses that the purpose of Great Britain was to force an extension of time.

Mr. Hay, in a lengthy note of June 16, 1903, took the ground that no such special difficulties as the treaty contem-

plated as a condition precedent to the extension of time had arisen. He characterized the request in regard to documents as "a complete impeachment of the American case" and concluded as follows:

"I trust you will assure the Marquis of Lansdowne of the earnest desire of the President to bring this vexed question to a termination in such a way that it will leave no unkind feeling between the two nations, and that he is desirous of meeting his Lordship's wishes as far as possible. He has, therefore, directed me to state that the British agent, or his representative, will be permitted at his convenience to examine all the documents adduced in the case of the United States to which reference is made in your notes of May 29th and June 8th, without any restriction or condition as to the use he shall make of the results of his examination, reserving for the agent of the United States the right to enter such motion or objection before the tribunal when it assembles as he may think proper.

"I have already advised you of the intention of the agent of the United States to have in London the originals or certified copies of all documents and papers contained in the case and counter case of the United States. He has already prepared copies in the original of the Russian documents in the case. Should the British agent not see proper to take advantage of the permission herein given to examine these and other documents in Washington, and should desire it, the Russian documents will be forwarded to him at London.

"In closing, I have the honor to inform you that, in faithful compliance with the treaty, the counter case of the United States, which is already printed, will be delivered in the numbers heretofore indicated, on July 3d, at your embassy in this city, unless you should indicate that delivery at Newport will be more convenient to you."

Mr. Choate took the affair up actively at London with the Attorney General, who stated that while the British counter case would be delivered by July 3d, it would necessarily be incomplete and would be accompanied with a statement that it might have to be supplemented in some form.

In the reply to the note of Mr. Hay of June 16th it was claimed, for the first time, that the British government was

entitled to the necessary time for inquiry at the head of Lynn Canal as to the credibility of certain Indian witnesses who had made affidavits in support of the case of the United States, and the weight which should be attached to their statements, and also for the examination on the spot of certain statements made in the United States case as to acts of occupation and exercise of jurisdiction in the disputed territory by the United States government. The note concluded with a statement that the British government felt bound to press for the extension of time for which they had applied, and that upon a failure to agree it would be necessary to summon the tribunal, in order that the point might be discussed and that this would probably cause the postponement of the discussion of the real question.

The position was taken by the British government, in a note of July 1st, that translations of certain Russian documents had been adduced in support of the case of the United States which did not comply with the convention which provided "that documentary evidence should accompany the case," and that for this variance His Majesty's government would have been justified in refusing to accept the case delivered on behalf of the United States. The claim was made that inasmuch as the documents themselves were not made accessible until after the delivery of the counter case, the British government was entitled to two months from that time to reply to them. The note concluded as follows:

"Should His Majesty's government be disappointed in this expectation they would be fully justified in refusing to proceed further in the matter, and in any case they reserve their right to protest to the tribunal against the reception of evidence to which the opportunity of reply had been denied them, and to claim permission to put in such evidence in rebuttal of the statements in the United States case as they have been prevented from submitting with their counter case.

"His Majesty's government cannot bind themselves to any time for the opening of the oral argument. If the extension they now require is not granted, and the tribunal meets in



September, His Majesty's government reserve the right to show cause before the tribunal for the postponement of the oral argument on the ground that time has not been granted to complete and examine the evidence which should be dealt with in their counter case."

Exception was taken to the assertions of this note on the ground that they involved "the honor and good faith of the United States."

Although the outlook had become exceedingly ominous, the counter cases were delivered on July 3d. The British counter case was preceded by a protest and a reservation of the "right to apply to the tribunal when it shall assemble for permission to put in such supplementary statement and evidence as the justice of the case may call for."

Early in July the British government sent representatives to Washington to examine and photograph documents relied upon in the case of the United States. Much time and labor were devoted to this work, but no material discrepancy was found to exist and no exceptions were relied on.

On July 29th Mr. Sifton proposed to General Foster that the preliminary meeting of the tribunal should be on October 15th "to organize, settle questions of procedure, fix the time when oral argument will be proceeded with, and *also deal with any other question that may be presented by either party for consideration.*" General Foster reminded him that more than three months previously it had been definitely agreed that the preliminary meeting should be on September 3d and declined to consider any postponement.

In view of the repeated demands for extension, the protest, the reservation of the right to ask the tribunal to postpone the hearing, the intimations in regard to exceptions to the regularity of the production of evidence in behalf of the United States, the statement of Mr. Raikes in his note of July 1st that His Majesty's government might, in view of the refusal of extension of time by the United States, be fully justified in refusing to proceed further in the matter, there was

necessarily much doubt as to the course that would be pursued by the British government when the tribunal assembled, and there was naturally conjecture as to whether application would be made for extension, as to whether exceptions would be filed having in view the evisceration of the evidence relied on by the United States, and as to what attitude such procedure would put the parties in.

Enough had transpired to cause the opening day to be looked forward to with grave anxiety. The British government appeared to have had in view the procurement of the desired extension by agreement, and failing in this, the only purpose made manifest was to proceed to a speedy hearing upon the merits. There were no exceptions and no dilatory proceedings. Shortly before the day of meeting, the Attorney General called to arrange for the argument. In response to an inquiry he stated that there would be no motion or exceptions. In a very few minutes it was agreed that one side should open and the other close, there being three alternating arguments on each side. While he stated that he would not urge it, he expressed a preference that the opening should be in behalf of Great Britain, which was promptly conceded.

The recital in the minutes as to the representatives of the respective governments is as follows:

The Hon. John W. Foster, the United States Agent, and Hon. Clifford Sifton, K. C., the British Agent.

Hon. Jacob M. Dickinson, Mr. David T. Watson, Hon. Hannis Taylor and Mr. Chandler P. Anderson appeared as counsel for the United States.

Mr. Robert Lansing, Solicitor of the United States Agency, Mr. O. H. Tittman, Mr. W. C. Hodgkins, Mr. Otis T. Cartwright, Mr. John T. Newton and Mr. F. R. Hanna, members of the United States Agent's staff.

The Attorney General (Sir Robert B. Finlay, K. C., M. P.), the Solicitor General (Rt. Hon. Sir Edward H. Carson, K. C., M. P.), Mr. Christopher Robinson, K. C., Mr. F. C. Wade, K. C., Mr. L. P. Duff, K. C., and Mr. A. Geoffrion, K. C.; Mr. S. A. T. Rowlatt and Mr. J. A. Simon appeared as counsel for Great Britain.

Mr. W. F. King and Mr. A. P. Collier, members of the British Agent's staff.

Mr. Reginald Tower, His Britannic Majesty's Minister at Munich and Stuttgart, as Secretary to the Tribunal; Mr. J. R. Carter, Second Secretary in the American Embassy, London, and Mr. Joseph Pope, C. M. G., Under Secretary of State of Canada, as Associate Secretaries.

In accordance with the precedents of courtesy which have obtained on such occasions, and also on account of his distinguished personality and the high position held by him, Lord Alverstone was chosen to preside over the tribunal. Sittings were held in the foreign office on Downing Street each day at eleven and continued until one-thirty. An adjournment was usually taken for half an hour for lunch, served very elaborately in the adjoining apartments by the British government, and there were afternoon sessions until four.

The argument began on the 15th of September and was concluded on the 8th of October. The counsel for America consumed about eight and a half and those for Great Britain about nine and a half days, of which time the Attorney General, Sir Robert Finlay, who made the opening argument, occupied six and a half days in an elaborate discussion dealing with every question in the case. On the main question he had a hopeless cause, in the defense of which, however, he expended such infinite pains and displayed so much forensic skill that he might truthfully have said :

“ . . . *si Pergama dextra*  
*Defendi possent etiam hac defensa fuissent.*”

The decision was rendered on October 20th. It was not announced from the bench nor were the opinions read. The President, in accordance with the provisions of the treaty, handed to the respective agents the decision of the tribunal upon the several questions submitted for their determination, accompanied by maps.

All of the proceedings and arguments were taken down stenographically and printed each day and a copy was given next morning to each member of the tribunal and the representatives of the respective governments.

On the thirtieth day of September, the President announced the death of His Excellency The Rt. Hon. Sir Michael H. Herbert, K. C. M. G., C. B. On account of the distinguished position held by him, and also from the fact that he had, in behalf of Great Britain, negotiated the treaty under which the tribunal was sitting, upon the motion of the counsel for the United States, seconded by the counsel for Great Britain, an adjournment was taken in honor of his memory.

#### QUESTIONS SUBMITTED.

The treaty provided that the tribunal should, in the settlement of the questions, consider the treaty between Great Britain and Russia of February 28/16, 1825, and that between the United States and Russia of March 30/18, 1867, and particularly Articles III, IV and V of the first mentioned treaty, which in the original text are word for word as follows :

“III. La ligne de démarcation entre les Possessions des Hautes Parties Contractantes sur le Côte du Continent et les Iles de l'Amérique Nord-ouest, sera tracée ainsi qu'il suit :

“A partir du Point le plus méridional de l'Ile dite Prince of Wales, lequel Point se trouve sous la parallèle du 54<sup>me</sup> degré 40 minutes de latitude Nord, et entre le 131<sup>me</sup> et le 133<sup>me</sup> degré de longitude Ouest (Méridien de Greenwich), la dite ligne remontera au Nord de long de la passe dite Portland Channel, jusqu'au Point de la terre ferme où elle atteint le 56<sup>me</sup> degré de latitude Nord : de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la Côte, jusqu'au point d'intersection du 141<sup>me</sup> degré de longitude Ouest (même Méridien) ; et, finalement, du dit point d'intersection, la même ligne méridienne du 141<sup>me</sup> degré formera, dans son prolongement jusqu'à la mer Glaciale, la limite entre les Possessions Russes et Britanniques sur le Continent de l'Amérique Nord-ouest.

“ IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l’Article précédent :

1°. Que l’île dite Prince of Wales appartiendra toute entière à la Russie :

2°. Que partout où la crête des montagnes qui s’étendent dans une direction parallèle à la Côte depuis le 56<sup>me</sup> degré de latitude Nord au point d’intersection du 141<sup>me</sup> degré de longitude Ouest, se trouverait à la distance de plus de dix lieues marines de l’Océan, la limite entre les Possessions Britanniques et la lisière de Côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la Côte, et qui ne pourra jamais en être éloignée que de dix lieues marines.

V. Il est convenu en outre, que nul Etablissement ne sera formé par l’une des deux Parties dans les limites que les deux Articles précédens assignent aux Possessions de l’Autre. En conséquence, les Sujets Britanniques ne formeront aucun Etablissement, soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des Possessions Russes, telles qu’elles sont désignées dans les deux Articles précédens ; et de même, nul Etablissement ne sera formé par des Sujets Russes au delà des dites limites.”

It was provided that the tribunal should consider any action of the several governments preliminary or subsequent to the conclusion of said treaties, so far as the same tend to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said treaties. In Article IV, referring to the treaty of 1825, the questions were stated as follows :

“ Referring to Articles III, IV and V of the said treaty of 1825, the said tribunal shall answer and decide the following questions :

“ 1. What is intended as the point of commencement of the line ?

“ 2. What channel is the Portland Channel ?

“ 3. What course should the line take from the point of commencement to the entrance to Portland Channel ?

“ 4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points ?

"5. In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of ten marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than ten marine leagues, was it the intention and meaning of said convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland not exceeding ten marine leagues in width, separating the British possessions from the bays, ports, inlets, havens and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?"

"6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than ten marine leagues from the coast, should the width of the lisière which was to belong to Russia be measured (1) from the mainland coast of the ocean, strictly so called, along a line perpendicular thereto, or (2) was it the intention and meaning of the said convention that where the mainland coast is indented by deep inlets, forming part of the territorial waters of Russia, the width of the lisière was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?"

"7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within ten marine leagues from the coast, are declared to form the eastern boundary?"

#### OPPOSING CONTENTIONS AND DECISION.

There was no controversy as to the first question, and it having been stated in the "case" for each government that the line began at Cape Muzon, the tribunal unanimously decided accordingly.

In respect of the second question, it was agreed that the body of water extending northeast from about the eastern end of Pearse Island was a part of Portland Channel. The United States contended that from this point Portland Channel extended out to the ocean south of Pearse and Wales Islands, and Great Britain contended that from that point it extended to the ocean north of those islands. A great many arguments were advanced by both sides on this question. It was manifest that it was regarded as the strongest claim put forward by Great Britain in the case. The Attorney General devoted nearly three days to its discussion. Vancouver had been sent by the British government to the northwest coast of America for the purpose of discovering a navigable river that could be used for bringing out furs from the British possessions in the interior. He explored the entire coast and in 1798 published a narrative, accompanied by charts showing Portland Canal.

These charts were known to have been before the negotiators of the treaty of 1825, but there was no direct evidence that the narrative was before them or was relied on by them. Tried by the charts alone, the contention of the United States was the stronger. Tried by the narrative alone, the general contention of Great Britain was conclusively established. If it were assumed that both the charts and the narrative were used by the negotiators, the question was involved in much doubt, but the evidence was more favorable to the British view.

The tribunal unanimously agreed that Portland Channel passed to the north of Pearse and Wales Islands, and a majority, consisting of Lord Alverstone, Mr. Root, Mr. Lodge and Mr. Turner, decided that after passing to the north of Wales Island it continued out to the ocean between Wales and Sitklan Islands through Tongass Passage. This gave Wales and Pearse Islands to Great Britain and Sitklan and Kanagunut Islands to the United States. Each has a length of about three and a half statute miles. Sitklan is about one and one-fourth miles wide, and has an area of 3.62 square miles, while Kanagunut has

only 1.97 square miles. They are of but little known value, and have no good harbor. They were supposed by Canada to have great strategic value in case of war on account of their proximity to Fort Simpson, which is contemplated as the terminus of a trans-continental railroad. Lord Alverstone filed a separate opinion on the second question, giving the reasons for his decision. Mr. Root, Mr. Lodge and Mr. Turner also filed a joint opinion on this question. Much has been said in regard to drawing the line through Tongass Passage. The explanation given by the commissioners of the United States is as follows :

“ He (Vancouver) followed the channel westerly, passing what has been known as Tongass Passage, between Wales and Sitklan Islands, through which he looked and saw at a short distance the ocean. Desiring, however, to find, if possible, another opening to the ocean which followed the general line of the continent, he kept on, through the narrow passage which passes north of Sitklan and Kannaghunut Islands, and came out into the ocean opposite Cape Fox. Near Cape Fox he encamped. He then explored the waters around Revilla Gigedo Island, and on the 14th of August returned to Cape Fox. At dawn the next morning, which in that latitude and in August must have been at a very early hour, he set out to return to his vessels, and he writes that in the forenoon, which must have been some hours after he started from the point opposite the narrow channel out of which he had issued the 2d of August, he passed the mouth of the channel which he had previously explored, and which he named ‘Portland’s Canal, in honor of the noble family of Bentinck.’ ”

His exact language is as follows :

“ In the forenoon we reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2d of this month. The distance from its entrance to its source is about seventy miles, which, in honor of the noble family of Bentinck, I named ‘Portland’s Canal.’ (Pp. 370-71, Vancouver.)

“ It seems clear from this statement that if he considered, as the other extracts from his narrative already cited seem to prove, the northerly channel as the natural extension of the



deep inlet running to the 56th parallel, he must have looked into it through Tongass Passage, and then and there gave it its name. Moreover, it is quite obvious from the maps that there are three outlets for the waters which come through the northern channel and are swelled by those from the inlets about Fillmore Island. Two of them are very small, so small as to be practically impossible to navigate. The third is the Tongass Passage, and that seems beyond a question, on the face of both the maps and the text, to be the true entrance to the channel which passes north of Wales and Pearse Islands. Accepting Vancouver's narrative as having the greatest weight, the conclusion follows that the award of the tribunal must be that the Portland Channel intended by the makers of the treaty of 1825 was that body of water which entered the sea by the Tongass Passage and passed thence north of Wales and Pearse Islands, and so onward to the immediate neighborhood of the 56th parallel."

On this point Lord Alverstone said:

"The narrative of Vancouver refers to the channel between Wales Island and Sitklan Island, known as Tongass Passage, as a passage leading south-southeast towards the ocean which he passed in hopes of finding a more northern and westerly communication to the sea, and describes his subsequently finding the passage between Tongass Island on the north and Sitklan and Kannaghunut on the south. The narrative and the maps leave some doubt on the question whether he intended the name Portland Canal to include Tongass Passage as well as the passage between Tongass Island on the north and Sitklan and Kannaghunut Islands on the south. In view of this doubt, I think, having regard to the language, that Vancouver may have intended to include Tongass Passage in that name, and looking to the relative size of the two passages I think that the negotiators may well have thought that the Portland Channel, after passing north of Pearse and Wales Islands, issued into the sea by the two passages above described."

Mr. Aylesworth filed a separate dissenting opinion, dealing with all the controverted questions and disagreeing with the majority upon all of them, except as to Portland Channel extending north of Pearse and Wales Islands. As to its continuation through Tongass Passage, he said:

"No intelligible reason for selecting it has been given in my hearing. No memorandum in support of it has been presented by any member of the tribunal, and I can therefore only conjecture the motives which have led to its acceptance.

. . . . .

"How can such a determination be reconciled with our duty to decide judicially upon the questions submitted to us? It is no decision upon judicial principles; it is a mere compromise dividing the field between the contestants."

He pronounced it as "nothing less than a grotesque travesty of justice." He concludes his opinion as follows:

"Finally, I have merely to say this further, that the course the majority of this tribunal has decided to take in regard to the islands at the entrance of Portland Channel is, in my humble judgment, so opposed to the plain requirements of justice, and so absolutely irreconcilable with any disposition of that branch of this case upon principles of a judicial character, that I respectfully decline to affix my signature to their award."

In the Fur Seal Arbitration, Senator Morgan and Mr. Justice Harlan voted upon the main points of controversy against the finding of the majority and filed very elaborate dissenting opinions. Nevertheless they signed the award. The first of the conventions agreed on by the Hague Tribunal provided that awards must be signed by each member of the tribunal, the members in the minority having the liberty, in signing, to state their dissent.

This, of course, was not obligatory upon the members of the Alaskan Tribunal, as the treaty only required the decision to be signed by the assenting members, but it showed the mature judgment of diplomats as to the procedure which seemed desirable to be followed by arbitrators, and this judgment was ratified by the concurrent assent of twenty-six nations to the Hague Tribunal convention.

Sir Louis Jetté filed a dissenting opinion without any arraignment of his associates, and likewise declined to sign the award.

The third question involved no real difficulty after the second question was answered. The line was drawn direct from the point of beginning to the middle of the channel of the body of water which had been declared to be Portland Channel.

The United States requested that it be answered to the fourth question that the line should be drawn from the head of Portland Channel northeasterly, along the same course which it had pursued up to the point where it touched the mainland at the head of Portland Channel, until it intersected the 56th parallel of north latitude. The treaty provided that the line should proceed to the north along Portland Channel to the point where it strikes the 56th degree of latitude north, and that from this last mentioned point it should follow the crest of the mountains situated parallel to the coast. Portland Channel did not reach to that parallel. It was contended by Great Britain that the mountains which the treaty meant coincided with the parallel at a point about fifty-seven miles almost due west of the head of Portland Channel. The discussion of this question involved the meaning of the words "coast" and "crest of the mountains," the determination of which was necessary for answering the fifth and seventh questions. The tribunal, Mr. Aylesworth and Sir Louis Jetté dissenting, decided that the point to which the line is to be drawn from the head of Portland Channel is the point on the 56th parallel of latitude which is indicated by the letter "D" on the map attached to and made a part of the findings of the tribunal. The point is almost directly north of the head of Portland Channel, near the intersection of the 56th parallel and the 130th meridian, and does not vary materially from the point contended for by the United States.

The fifth and seventh questions were inseparable in the argument. The language of the treaty was that the line of demarcation should follow the summit of the mountains situated parallel to the coast. It was necessary to determine the meaning of the word "coast" as used in the treaty, and what

mountains, if any, answered to those meant by the treaty. It was known that the negotiators had before them and consulted Vancouver's charts and two maps based upon them, namely, an official map published by Russia in 1802 and one published by Faden in 1823. Upon all these maps there appeared a distinct chain of mountains with a continuous crest extending from near the head of Portland Channel northerly, maintaining a general parallelism to the mainland coast, up to Mt. St. Elias and beyond, and on all of them the mountain chain so depicted passed around the heads of all of the inlets, and on none of them was it broken, with a trend across any of the inlets. It indicated a natural boundary between the coast and the country to the interior. The correspondence showed that the negotiators had in mind a chain or range of mountains existing approximately about ten marine leagues from and generally parallel to the coast. The establishments of Russia were on the islands, but her trade was mainly with the inhabitants along the coast. It was apparent throughout the entire negotiations that Russia sought, and that Great Britain intended to concede, a strip of coast along the continent bounded by a mountain barrier, and that this should be a protection to the establishments of Russia upon the islands, and to her trade with the Indians along the coast, and that it should not be penetrated by Great Britain, except under the right given to Great Britain, to pass along navigable rivers extending from British territory through this border, which was designated as a *lisière*, to the sea.

Subsequent explorations developed that there was no such continuous chain, or mountain crest, in the interior, as Vancouver and the map makers who followed him had depicted. The whole region is mountainous, composed of an elevated plateau, with numerous peaks, without any regular arrangement in a mountain chain. There are short ranges, but no distinct general range, as far back as the explorations have gone. The United States contended that, taking the correspondence and the maps with reference to which the treaty was

made, and the maps which for so many years after the treaty laid down the boundary line around the heads of the bays and inlets, it was not only the manifest purpose of the treaty that the line should, in any event, run around all of the interior waters, but that all three of the governments had by their acts put this practical interpretation upon the treaty. It was also contended for the United States that, while there was no range of mountains answering to the treaty, the purpose nevertheless was plain that the line with reference to the heads of the inlets should be drawn with the same relation that the mountains depicted upon the maps bore to the heads of the inlets, and that the coast to which this line was to be drawn parallel was the mainland coast extending around the heads of all interior waters. On the other hand, Great Britain contended that "coast" meant, not the whole physical coast of the country, but rather a political coast; that is to say, not a coast that is coincident with the ocean and the land, but a coast defined by a line drawn from headland to headland where they were not more than ten miles apart. Such a line would run across bays and inlets and canals. Great Britain contended that the mountains meant were those next to the sea, and that the tribunal should draw the line along the mountains nearest to the sea and parallel to the political coast. The result of this contention would have been to carry the line across Glacier Bay, Taku Inlet, Lynn Canal and other similar waters, and take from the United States every safe harbor on the northwest coast of America. This contention virtually obliterated the *lisière*, which was intended to be a protection to Russia, and so far from giving a continuous strip of continent, the *lisière* would have been broken by stretches of water.

While the United States contended that there was no definite range of mountains such as the treaty contemplated, and that in the absence of such range, the line was to be drawn under the alternative provision, ten marine leagues from the continental coast and generally parallel to it; yet it also con-

tended that if the tribunal should find that the plateau elevation and the peaks thereon constituted a mountain summit, within the meaning of the treaty, it was necessary, in selecting the peaks, and in drawing this mountain line, so to locate it that it would pass along peaks which could be associated in a way that would carry the line around the heads of the interior waters, and that it would not be in accordance with the manifest purpose of the treaty to connect peaks directly which were situated on opposite sides of any of these bays and inlets and thus break up the coast line and destroy the *lisière*. Lord Alverstone, Mr. Root, Mr. Turner and Mr. Lodge answered the fifth question in the affirmative. Lord Alverstone wrote a separate opinion on that question and the other three wrote a joint opinion. It is a remarkable fact that no opinion was written by the majority of the court upon the seventh question. The question as to the mountains was incidentally discussed in the opinion upon the fifth question. The tribunal answered the seventh question to the effect that there were mountains in the country which had been explored which answered to those referred to in the treaty, and the line was drawn connecting mountain peaks, and substantially where the United States contended that it should be drawn. The line crossed the rivers as had been indicated by Mr. Fish. A stretch of the line connecting a peak north of parallel 57 with a peak north of Taku River was indicated arbitrarily, as the country had not been surveyed, the distance being about 130 miles. With this exception there can hardly be any room for controversy as to exactly where the boundary line is, for every peak is carefully designated, and the line is actually laid down upon the map which is attached to and made a part of the judgment.

The sixth question was not answered, as it was only to be considered in the event that the fifth question should be answered in the negative.

With the exception of Wales and Pearse Islands and the sovereignty over half of the channel south of them, the United States were entirely successful.

## CONCLUSION.

It was not strictly an arbitration, but rather what might be termed an arbitral tribunal, for an arbitration is usually composed of an odd number and with one or more disinterested members. The President was not content to submit to an arbitration, as ordinarily constituted, the determination of our right to territory which for so long a time had been in the undisputed possession of the United States. Following the plan proposed in the Olney-Pauncefote Treaty of 1897, which was not ratified by the Senate, it was agreed to submit the controversy to the judgment of a tribunal composed of an equal number of appointees by each government, with the requirement that at least four should concur. It is not conceivable that it was contemplated that a convention brought about after such long negotiations, and in regard to a difference of such long standing, should result in a fiasco. Both governments hoped and expected that there would be a determination of the whole matter. It is manifest that cherishing this hope they reposed great confidence in the impartiality and courage of the appointees, for there could be no determination possible without at least one member finding adversely to his national sympathies. That such hope and confidence were cherished is made manifest by the recital of the treaty that it would be unfortunate if a majority of the tribunal should fail to agree upon any of the points submitted for their decision. The way in which the tribunal was constituted, and the fact that it settled the controversy, will for all time make it memorable in the history of peace measures. No one who values the peace of nations could fail to rejoice that such a grave controversy, which threatened to become more and more acute, was finally and amicably settled.

If the tribunal had failed to reach a decision, the situation could not but be regarded with grave apprehensions. Great Britain had set up a formal claim to territory over which the United States had exercised undisputed sovereignty for over thirty years. Would Great Britain have remained quiescent

if her title had been pronounced good by her three members of the tribunal? If the three appointees of the United States had all declined to concur in such judgment, would the United States, without compulsion, have surrendered territory over which they and their vendor had, without question, asserted sovereignty for over seventy years? If this treaty had failed, would the United States have been willing to submit to the decision of a foreign umpire? To what extent would party spirit in both countries have inflamed the situation? These are grave questions, and such as would make anyone who understands the great considerations that should bind together the two great English-speaking nations shudder to contemplate; but happily they are questions which the judicial impartiality and courage of a great Englishman have made it unnecessary to answer. No man can achieve an act of real greatness and hope to escape censure. With his profound knowledge of human history and of the narrow limitations of selfish natures, he doubtless expected it, as did Marshall in respect of his action in the trial of Burr, and his high sense of duty in a trying situation was, we may be sure, like that expressed by Marshall when he said:

“That this court dares not usurp power is most true. That this court does not shrink from its duty is not less true. No man is desirous of becoming the peculiar subject of calumny. No man, might he let the bitter cup pass from him without reproach, would drain it to the bottom. But if he has no choice in the case, if there is no alternative presented to him but a dereliction of duty or the opprobrium of those who are denominated the world, he merits the contempt as well as the indignation of his country who can hesitate which to embrace.”



# TO WHAT EXTENT WILL A NATION PROTECT ITS CITIZENS IN FOREIGN COUNTRIES?

BY

BENJAMIN F ABBOTT,  
OF GEORGIA.

The space devoted to this particular branch of international law by text writers is comparatively small.

It is not expected that I should present any specially new views on the subject, but rather that I should, with as much system and brevity as possible, refer to such decisions of our own State Department, as well as to works of publicists, as I may think aptly illustrate the subject, so that what is here written may be of some substantial help to those who may be in the situation to inquire concerning their rights while domiciled abroad.

It would not be practicable to treat of protection by the government under all conditions in peace and war, so I have confined myself to the inquiry, To what extent will a nation protect its citizens in foreign countries in time of peace?

In treating this subject I shall not attempt to draw any distinction between stable and weak nations. I invoke the principle, for the purpose of this discussion, that is laid down by Wheaton on the Law of Nations,<sup>1</sup> who says that:

“No principle of law is more universally acknowledged than the perfect equality of nations.”

Ethically speaking, therefore, there are no weak nations. As soon as a state is admitted into the great family of nations, it is the equal of the most powerful.

International commerce has brought the countries of the world into closest relation. The easy and rapid facility with which intercommunication between the nations is accom-

<sup>1</sup> Wheaton's Law of Nations, p. 636.

plished, together with the ever-increasing demand for the surplus products of every country, both of its soil and manufacture, the marvelous revolution brought about by steam and electricity, and withal the wonderful progress made in the way of inventions of new machinery, all these conditions have combined to invite abroad the representatives of merchants, manufacturers, inventors, as well as skilled artisans for the purpose of traffic and the utilization of these inventions, and for the purpose of building railroads, electrical plants and the establishment of other great enterprises. It becomes therefore of prime importance to the man who temporarily departs from his own country and the jurisdiction of its laws to take up his abode in a foreign country to know to what extent he is authorized to call upon his own government for protection against wrong and injury.

There is much confusion in the mind of the average citizen, as to the extent to which he carries with him into a foreign country the sovereign power and protection of his own government. Some evidently think that they take with them, and are wrapped in, the protecting folds of the flag of their own nation, and all that is necessary for them to do is but to call on their own government in case they become involved in trouble, or their property rights are invaded, and that the state will immediately extend its relief.

Nothing can be more erroneous. If a citizen of the United States or of any other country, on business or pleasure, enters the territory of another nation, he must take the law as he finds it, and as it is administered. However defective that law may be, and however much it may fall short of his view of what the law is, he cannot complain so long as that law is administered in his case with the same degree of fairness that it is administered in cases between citizens of that country. Nor can he complain of any breach of international law should he be injured in person or property by any act of lawlessness on the part of the people of that country, so long as the government takes no part in such wrong-doing, or acquiesces

therein, or, having the means to prevent the uprising, remains inactive and fails to take any steps for his protection.

I will say at the outset, from an examination of the authorities, that it is the duty of a state to protect its citizens abroad *within the rules of international law*, both in person and property, against the discrimination, wrong and injustice of the government in which he may be temporarily domiciled, whether that wrong or injustice grow out of judicial or other proceeding by such government.

It is important to inquire, before proceeding with the discussion of the subject, in whose favor the state will interfere, and to whom it will extend its protection.

We should say: First, To its own native-born citizens of course. Second, To naturalized foreigners who have in due form of naturalization become citizens. Third, And under certain circumstances to foreigners who have acquired a domicile in the country and who have declared their intention to become citizens. Under the law as it is held in this country, such foreigners would certainly have the right to appeal to the country of their domicile in a controversy with any country, other than that to which they formerly owed allegiance.

For the sake of brevity I have prepared and grouped a number of references to the rulings of our own State Department and to works on international law, omitting in the main the full statement of facts on which the ruling to be cited was based, most of the references being sufficiently broad and comprehensive to show distinctly without more the exact proposition laid down.

I have arranged them under two heads:

#### I. PROTECTION EXTENDED.

The duty of the state to protect its citizens abroad is thus summed up by Hall in his work on International Law:<sup>1</sup>

“States possess a right of protecting their subjects abroad which is correlative to their responsibility in respect of injuries

<sup>1</sup> Hall on International Law, p. 275 (3d edit.).

inflicted upon foreigners within their dominions; they have the right, that is to say, to exact reparation for maltreatment of their subjects by the administrative agents of a foreign government, if no means of obtaining legal redress through the tribunals of the country exist, or if such means as exist have been exhausted in vain; and they have the right to require that, as between their subjects and other private individuals, the protection of the state and the justice of the courts shall be afforded equally, and that compensation shall be made if the courts from corruption or prejudice or other like cause are guilty of serious acts of injustice. Broadly, all persons entering a foreign country must submit to the laws of that country; provided that the laws are fairly administered they cannot as a rule complain of the effects upon themselves, however great may be the practical injustice which may result to them; it is only when those laws are not fairly administered, or when they provide no remedy for wrongs, or when they are such, as might happen in very exceptionable cases, as to constitute grievous oppression in themselves, that the state to which the individual belongs has the right to interfere in his behalf."

The famous case of Martin Koszta <sup>1</sup> referred to in all the late authorities may be thus summed up in substance. The facts are somewhat voluminous and space forbids anything more than a brief reference thereto. Koszta was a Hungarian. He was engaged in the insurrection of 1848-9. He came to the United States, and in the city of New York about 1851 he declared his intention to become a citizen. In less than two years he went to Turkey and was there arrested by some means and delivered to the commander of the Austrian man-of-war "Hussar." The representative of our government at Constantinople requested Commodore Ingraham, commanding U. S. warship "St. Louis," to demand the release of Koszta. This demand was made and refused. To avoid actual conflict between these two warships the French consul at Smyrna intervened, and Koszta was left in his custody, by agreement, pending the adjustment of the matter between the United States and Austria.

<sup>1</sup> See this case fully stated, Snow on International Law, pp. 51, 52.

Our State Department, through Mr. Marcy, Secretary of State, ruled in substance that Koszta was entitled to the protection of this government on the ground principally that he had obtained a domicile in the United States and had declared his intention to become a citizen—that “domicile conferred national character.” This ruling was acquiesced in by Austria and Koszta was returned to the United States. Austria did reserve, in the final adjustment of the matter, the right to proceed against Koszta should he ever return to that country.

The case of Simon Tousig, cited in Snow at page 52, I may say was ruled differently by our State Department. He had declared his intention to become a citizen, but had not taken the final step to clothe him with all the attributes of citizenship. He had been domiciled in the United States. He had no passport. *He returned to Austria voluntarily.* He was charged with the violation of the laws of that country. In that case Mr. Marcy, Secretary of State,<sup>1</sup> decided that:

“Every nation, when its laws are violated by anyone owing obedience to them, whether he be a citizen or a stranger, has a right to inflict the penalties incurred upon the transgressor if found within its jurisdiction.”

The celebrated Cutting case was brought about by complaint of abuse of judicial process. The facts of that case, in brief, were as follows: Cutting was a citizen of the United States. He had been domiciled in Mexico, engaged in business there, had business troubles with his co-partner—he published in El Paso, Texas, certain strictures on the character of his business associate. After that, being again in Mexico, he was arrested and imprisoned. He appealed to this government for protection. It appears that both the executive and judicial departments of that republic held that he was amenable to its laws, although the offense was committed out of the jurisdiction of the Mexican republic.

<sup>1</sup> Snow on International Law, pp. 51, 52.

In 1886 Mr. Bayard, Secretary of State, ruled as follows: <sup>1</sup>

“The government is still compelled to deny what it denied on the 19th of July, 1886, and what the Mexican government has executively and judicially maintained, that a citizen of the United States can be held under the rules of international law to answer in Mexico for an offense committed in the United States simply because the object of that offense happened to be a citizen of Mexico.”

The following cases serve to illustrate a situation where a citizen receives injury at the hands of a mob in a foreign country which the government by due diligence could have suppressed:

In 1878 Mr. Evarts, Secretary of State, ruled in a controversy with Peru<sup>2</sup> that “a government is liable internationally for damages done to alien residents by a mob which by due diligence it could have repressed.” Likewise, our State Department still further affirmed the principle of liability when speaking through Mr. Fish, Secretary of State, in a controversy with Brazil<sup>3</sup>:

“It is the duty of Brazil, when it receives the citizens of a friendly state, to protect the property which they carry with them or may acquire there. If persons in the service of the government connive at or instigate a riot for the purpose of depriving a citizen of his property, the imperial government must be held accountable therefor.”

On complaint of discrimination by the government of Spain against colored citizens of the United States, Mr. Frelinghuysen, Secretary of State, wrote as follows: <sup>4</sup>

“The government will regard the imposition of taxes or charges discriminating against colored citizens of the United States on account of color as the subject of international complaint.”

<sup>1</sup> Snow on International Law, p. 31.

<sup>2</sup> Wharton's Dig., International Law, sec. 226.

<sup>3</sup> Mss. Brazil, 1875, Wharton's Dig., sec. 226.

<sup>4</sup> Wharton's Dig., sec. 204.

The foregoing is a brief synopsis of a few of the cases arising on different statements of fact in which our government has said that protection would be extended.

## II. PROTECTION DENIED.

I will now refer to instances which illustrate a situation where the government will not extend its aid to any of its citizens who have practically expatriated themselves by taking up their abode in a foreign country.

In 1851 Mr. Webster, Secretary of State,<sup>1</sup> in Thrasher's case ruled as follows:

"Our citizens who resort to countries where trial by jury is unknown, and who may be charged with crime, frequently imagine when the laws of those countries are administered in forms customary there, that they are deprived of rights to which they are entitled, and therefore may expect the interference of their government, but it must be remembered in all such cases that they have, of their own free will, elected a residence out of their own native land, and preferred to live elsewhere and under another government, and in a country in which different laws prevail. They have chosen to settle themselves where jury trials are not known, where representative government does not exist, where the privilege of the writ of *habeas corpus* is unheard of, and where judicial proceedings in criminal cases are brief and summary. Having made this election, they must necessarily abide its consequences. No man can carry the ægis of his national American liberty into a foreign country, and expect to hold it up for his exemption from the dominion and authority of the laws and the sovereign power of that country, unless he is authorized to do so by treaty stipulation."

Likewise in 1855 Mr. Marcy, Secretary of State,<sup>2</sup> ruled that:

"Persons, emigrating from the United States to take up their residence in a foreign land, cease to be citizens of the United States, and can have after such change of allegiance no claim to protection as such citizens from our government."

<sup>1</sup> 6 Webster's Works, p. 527.

<sup>2</sup> Wharton's Dig., sec. 190.

The same eminent statesman in a communication to Mr. Clay in 1855,<sup>1</sup> concerning certain alleged wrongs on one who claimed to be a citizen of the United States, but domiciled in Peru, still further affirmed the principle. That citizen who went to the Fiji Islands for his health in 1866 presents a case which strikingly illustrates how a citizen of the United States can divest himself of national character. That was a case of regaining his health, as we may infer, at the loss of his national character.<sup>2</sup>

Mr. Porter, Acting Secretary of State, in 1885, disposed of the claim of that citizen to the protection of this government by saying that he was not entitled to it; that his recourse should be on Great Britain, inasmuch as his domicile was British, so constituted by reason of the fact that he resided in Fiji at the time of the annexation of the islands to Great Britain, and so continued to reside there after annexation.

In 1851 Mr. Webster, Secretary of State,<sup>3</sup> commenting on the fact that many citizens of the United States had taken up their abode in the Sandwich Islands, in a communication to Mr. Severance, said in substance, that all such who had gone to take up their abode in the Sandwich Islands thereby ceased to be American citizens and that "they would have no right to further demand the protection of this government." Further on he says: "You will therefore not encourage in them, nor indeed in any others, any idea or expectation that the island would become a part of the United States." In this prophecy Mr. Webster spoke as a mere man and not as a seer as to the country's expansion.

#### NON-LIABILITY OF THE GOVERNMENT.

I will now briefly refer to some instances in which this government has decided, that it is not liable internationally for

<sup>1</sup> Wharton's Dig., sec. 190.

<sup>2</sup> Wharton's Dig., sec. 190.

<sup>3</sup> *Mass. Hawaii*, Wharton's Dig., sec. 190.



indemnity to foreigners residing in this country on account of injuries resulting from riots or mobs. Of course the principle of non-liability on the part of the United States, insisted on under the circumstances of the cases to be referred to, will be conceded by it in favor of other nations, when citizens of the United States domiciled abroad are the sufferers in person or property from mob violence of the people in a foreign country. That is to say, the United States will apply the same rule to other nations as it claims for itself.

In 1839 Mr. Forsyth, Secretary of State, decided in a controversy with Spain:<sup>1</sup>

“The government of the United States is not liable for misconduct of its private citizens within their jurisdiction, such citizens not being in any sense its representatives.”

In the case of the British subjects, who suffered at the hands of a mob in Texas, Mr. Evarts, Secretary of State, ruled, in substance, that the offense was against the laws of Texas, and cognizable only by the laws of that state<sup>2</sup> so far as civil redress was concerned.

On the 30th of November, 1885, a mob at Rock Springs, Wyoming,<sup>3</sup> killed twenty-eight Chinese, wounded fifteen, drove many from their homes and destroyed a large amount of property. On a claim for indemnity being urged by China, our State Department, speaking through Mr. Bayard, in substance held that the government was not liable as such for indemnity; that while the outrage perpetrated on these Chinese was committed in a territory of the United States, still the territory was organized and enjoyed a system of local self-government; that the government as such was not liable for any local disturbance or domestic violence, and that redress must be obtained through local laws of the territory, and that under the rules of international law the federal government was not responsible. The Secretary went on to say, further, in substance: “The

<sup>1</sup> Wharton's Dig., sec. 227.

<sup>2</sup> Wharton's Dig., sec. 227.

<sup>3</sup> Wharton's Dig., notes China, sec. 67.

circumstances of this case were so shocking, and the outrage perpetrated on these men so great, that a recommendation to Congress would doubtless be made by the President for an appropriation to pay for the property destroyed. This was as a gratuity, the government emphatically denying that it was liable for the same, but the recommendation was made solely through pity for the unfortunates whose property was destroyed."

There are two other notable instances of mob violence inflicted on aliens domiciled in the United States. These both occurred in New Orleans. The first was directed against the Spaniards, in 1851, on account of the shooting of American citizens in Cuba who had joined the filibustering expedition. The Consulate of Spain was attacked also. On claim for indemnity by Spain,<sup>1</sup> our government held that it was not liable except as to the case of the consul; that the claim for redress must be sought through the courts of the State of Louisiana, and that the claim of private individuals was no greater than would have been the claim of a citizen of the United States under similar circumstances.

The other case was that of the Italians who suffered at the hands of a mob in New Orleans,<sup>2</sup> in 1891. On a demand for indemnity by Italy, our government speaking through Mr. Blaine, Secretary of State, ruled emphatically, the same principle of non-liability, but as a mere gratuity, a recommendation was made to Congress, and that body voted \$25,000, to be paid to the families of the Italians who were killed. These references are sufficient to illustrate this phase of the subject.

The Act of 1868, known as the Expatriation Act, to be found in section 1999, Rev. Stats. U. S., deals only with naturalized citizens, and does not undertake to define what is the *status* of an alien who has simply declared his intention to become a citizen, with respect to his right, to claim protection at the hands of this government. That act is a

<sup>1</sup> Snow on International Law, pp. 35, 36.

<sup>2</sup> Snow on International Law, pp. 35, 36.

simple declaration as to what this government understands the law to be, and of its policy with reference to aliens who have expatriated themselves and become citizens of this country.

Commenting on this act, Mr. Evarts, Secretary of State,<sup>1</sup> in a communication to Mr. Fish, in 1879, rules as follows:

“The Act of 1866 before recited made an onward step. It declared that the right of self-expatriation is a natural and inherent right of all people and indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness.”

In speaking of the legal effect of naturalization of foreigners in this country, Mr. Cass, Secretary of State,<sup>2</sup> in a communication to Mr. Wright, thus expressed himself:

“He held that the moment a foreigner becomes naturalized in the United States he experiences a new political birth, and should he return to his native land he goes as an American citizen. It may be important to qualify the statement by adding the exception that he is not absolved from any crime or offense as against the laws of that country [meaning the country of his former allegiance; these words in brackets are mine] committed prior to his departure, but the offense must have been such as that he was liable for trial for same before he expatriated himself.”

Governmental protection against and redress for injuries is generally sought and obtained through the diplomatic and consular representatives of the government appealed to, but cases may arise where the emergency is so great and pressing that an appeal through such channels would be fruitless. In such cases the naval officers of the country appealed to may interpose to protect the citizen, but in order to justify such interference the danger must be so imminent and pressing as to justify the conclusion that the wrong will be inflicted unless immediate protection through the agency of the navy is extended.

<sup>1</sup> Mr. Evarts, Sec. State, to Mr. Fish, Mss. Switzerland, notes to Taylor, 227.

<sup>2</sup> Mr. Cass to Mr. Wright, Taylor, 226.

I may say as to the claims arising out of the late disturbance in China, known as the Boxer uprising, and the international complications resulting therefrom, the adjustment and payment of an indemnity to each of the various allied nations concerned, stands on a different footing. That was an outbreak which China could and should have suppressed. It was not only an infliction of injuries on private citizens of the various countries domiciled in that empire, but was a direct attack on the diplomatic corps of each of the countries represented.

It will be observed that in the preparation of this paper the sources of international law most frequently used as authority for the propositions herein laid down have been the papers and documents connected with the Department of State of our own country.

The student of the noble science under consideration can but be charmed and fascinated with the lofty style, the pure English, the elegant diction, the unambiguous phraseology of the papers issuing from the officers of state, in our own country in the course of whose administration the cases have arisen which are herein collated. Unlike statutes, which are often the creation of compromise, and veiled in obscurity and doubt as to their true meaning, the opinions of our state officers who have spoken for the department are self-explanatory and luminous.

The latitudinous phrase of Jeremy Bentham,<sup>1</sup> "A citizen of the world" will never find a place in the nomenclature of the nations of earth so long as they are ruled by men with human passions and impulses. So long as this condition exists the enforcement of international law will be required, diplomacy and arbitral tribunals will be resorted to and the strong protective arm of the nation will be extended to succor and relieve the oppressed citizen abroad. But when every man can say for himself, in his heart of hearts, that he is a "brother to humanity," then, and not till then, can he claim to be a "citizen of the world."

<sup>1</sup> Wheaton's Law of Nations, 329-331.

I have been impelled by an overwhelming sense of my own insufficiency for the task, from much obtrusion of my own views on this great subject. I have been content to draw from the great fountains, the true sources of international law in the construction of this paper, and in support of what I have said. If I have succeeded in putting in succinct and systematic order the principles and precedents which go to sustain and make plain the true relation which the government at home bears to the citizen abroad, then this paper may not have been written wholly in vain.

**REPORT**  
**OF THE**  
**COMMITTEE ON JURISPRUDENCE AND LAW REFORM.**

*To the American Bar Association :*

Your Committee on Jurisprudence and Law Reform had referred to it for investigation and report two matters. The one being under the resolution of Judge Baldwin dealing with the sales of honorary degrees in law, and the other under the resolution of Judge McCrary, having reference to the subject of trusts.

**I. SALES OF HONORARY DEGREES.**

In order to ascertain how far the evil of the sale of honorary degrees in law existed, a letter was addressed to the several Vice-Presidents of the Association. Replies were received from forty states and territories, including the District of Columbia. So far as we have been able to discover, the only person who sought to make sales of honorary degrees in law was a man named Farr, who was driven from Chattanooga, Tennessee, appeared afterwards in Nashville, and being compelled to leave that city, it is said, went to Washington, District of Columbia. The last heard of him was that he was under arrest for using the United States mails for fraudulent purposes. We do not consider that any further action in this matter should be taken by the Association.

**II. COMBINATIONS OR TRUSTS.**

The subject of combination in the form of trusts received the careful consideration of your Committee, and the conclusions reached are as follows :

1. That under the clause of the Constitution to regulate commerce Congress has no power to create corporations, except those which have for their object the carrying on of exclusively interstate business.

2. That no such power as is contemplated by the resolution should be delegated by the states to Congress.

3. That we cannot recommend "that state taxation should be upon property actually within the state only."

The "property" to which reference is made in the resolution must be personal, for realty is necessarily taxed under the laws of the state where located.

Personal property should be taxed under the laws of the state of the residence of the owner. The rule suggested in the resolution referred to your Committee would have the effect of enabling the owner of personal property to evade taxation.

4. That we cannot recommend "that labor organizations should be relegated to national control under national incorporation."

### III. NEGLIGENCE CAUSING DEATH IN MARITIME CASES.

The Committee also begs leave to report in favor of the passage by Congress of an act entitled "An act to authorize the maintenance of actions for negligence causing death in maritime cases." A copy of the proposed act is hereto attached.

In the year 1900 this Committee reported in favor of a bill on that subject which had been introduced into Congress by Mr. Boutell, of Illinois, and the recommendation of the Committee was adopted by the Bar Association, but no action upon the bill was ever taken by Congress.

Thereafter the Maritime Law Association of the United States took up the matter, and after much consideration by committees and by the Association itself, finally, in November, 1903, approved the bill which was then reported finally by the Committee.

That bill was presented to Congress, and has been referred to the Judiciary Committee of the House. The questions involved in the bill, both questions of right and of remedy, seem to have been carefully considered by the Maritime Law Association of the United States, and the bill is warmly recommended by them.

We have examined the bill, and we report in favor of a recommendation by the Association that the bill should pass.

We recommend, therefore, the following resolution :

*Resolved*, That the bill presented to Congress by the Maritime Law Association of the United States, entitled "An act to authorize the maintenance of actions for negligence causing death in maritime cases," is, in the opinion of this Association, one which supplies a defect in the law of the United States, and we earnestly recommend to Congress that it should take up and pass this bill.

Respectfully submitted,

P. W. MELDRIM,  
ROBERT D. BENEDICT,  
CHAS. CLAFLIN ALLEN,  
HENRY D. ESTABROOK,  
WILLIAM A. KETCHAM.



AN ACT TO AUTHORIZE THE MAINTENANCE OF ACTIONS  
FOR NEGLIGENCE CAUSING DEATH IN MARITIME CASES.

*Be it enacted that :*

SECTION 1. Whenever an action, whether *in rem* or *in personam*, might have been maintained by any injured party, had death not occurred, to recover damages for personal injury happening to such person on the high seas, the Great Lakes, or any navigable waters of the United States, or if happening to any of the passengers or crew on board of any vessel of the United States, then in whatsoever waters such vessel may have been at the time of such injury, such injury in every such case having been caused by the wrongful act, neglect or default of another and though amounting to a felony, then if such personal injury shall result in the death whether on land or water of the person injured, an action *in rem* or *in personam* as may be appropriate, may be brought for the exclusive benefit of the deceased's husband, wife or next of kin, by the personal representatives of the deceased against the vessel, foreign or domestic, or the persons that would have been liable to the deceased if death had not occurred. And in such action such personal representatives may recover such damages as shall be fair and just compensation, with reference to the pecuniary damages resulting from such injury and death to the deceased's husband, wife or next of kin, severally, not exceeding in all the sum of \$5000, to be apportioned among them at the trial, according to the pecuniary damages severally sustained by them, provided, however, that such action, if *in rem*, shall be brought within one year, or if *in personam*, within two years, after the decedent's death; but if the vessel, or the persons liable be absent from the United States at the time of such death, the periods above limited for the commencement of the action against them respectively shall be counted from the time of the first presence of such vessel or persons within the United

States affording reasonable opportunity for service of process upon them after such injured person's death.

SEC. 2. If at decedent's death, any action brought by him to recover damages for such injuries be pending and undetermined, such action shall proceed no further, except that his personal representatives may at their option on petition to the court and upon such notice to the defendant as the court may direct, be substituted as plaintiff in that action, and such amendment of pleadings be made as the court may direct, and the action may, on order of the court, thereafter proceed for the recovery of damages pursuant to this act, and not otherwise; if final judgment on the merits has been rendered in the deceased's lifetime in any action brought by him for such injuries, such judgment shall be a bar to any other action therefor, except for the enforcement of such judgment. Except as in this section provided no other action than that given by the preceding section shall be maintained by reason of such injuries.

SEC. 3. This act shall not abridge the rights of ship owners and others to avail themselves of the provisions of Sections 4282, 4283, 4285, 4286 and 4287 of the Revised Statutes of the United States, and acts amendatory thereof and additional thereto relating to limitations of liability; nor the right of suitors to a remedy *in personam* in the courts of the several states and elsewhere, for the recovery of damages pursuant to this act, against any person or corporation liable therefor.

SEC. 4. In any action brought under this act, negligence or contributory negligence of the decedent shall have the same effect as to the damages recoverable as if the action were an action brought by the injured person, but the damages are not in any case to exceed the limit above provided.

**REPORT**  
**OF THE**  
**COMMITTEE ON JUDICIAL ADMINISTRATION AND**  
**REMEDIAL PROCEDURE.**

*To the American Bar Association :*

The propriety of requiring indemnity by municipalities to persons whose property has been destroyed by mobs or in the course of riotous proceedings has been recognized in some of the states of this union. The enactments on the subject have been quite guarded and might well be followed in other states. It is probable, however, that they should be extended to cases beyond their present scope. In reference to such extension your Committee suggests for consideration two matters: (a) Injuries to the person including cases of death by lynching or from acts occurring in the inflammation of rioting and the work of mobs; (b) injuries to property or person inflicted by unions or their members in enforcing or attempting to give effect to strikes.

On the general subject all will agree with Chancellor Kent in his expression that "It may be received as a self-evident proposition, universally understood and acknowledged throughout this country, that no person can be taken or imprisoned, or disseized of his freehold, or liberties, or estate, or property unless by the law of the land, or the judgment of his peers." (2 Kent's Com., \*13.)

The British Parliament acted in this matter very decidedly and quite comprehensively more than six hundred years ago, especially by the statute of Winchester, passed in the reign of Edward I. (2 Reeve's History of Eng. Law, Finlason, 121-3, 322.) Prevention of robberies and other offenses, as well as punishment of the offenders, was an object of the statute, and police regulations of a strict nature were enjoined.

The policy adopted was to compel the hundred, in cases of a robbery being committed, to agree for the damages or answer for the bodies of the robbers. (*Id.*, 122.) The statute indicated that offenses had increased for "want of a due administration of the subsisting law." Sir William Blackstone referred to the statute in a chapter treating of "Arrests," while speaking of *Hue and Cry*, and explained the law on the subject with his usual lucidity and clearness.

It is not enough to empower or even require municipal corporations to preserve the peace, prevent disturbances and disorderly assemblies. The statute, in order to give a remedy to persons wrongfully injured, must go further and make the city or other municipal body responsible for the injury by a riotous assemblage of persons or from the neglect of the officers in not preserving the peace and preventing the wrongful injury or destruction.

Duffy *vs.* Mayor, etc., of Baltimore, Taney, 200, and Western College of Homeopathic Medicine *vs.* City of Cleveland, 12 Ohio State, 375, are cases illustrating the necessity of specific legislation.

Emphasis should be given to the fact of such necessity, although some may suppose that the common law, with a liberal exercise of the right to enjoin, may be adapted to meet some of the difficulties likely to happen, so far as injuries to property may be concerned; but as to claims for damages resulting in death it is obvious that statutes are still more necessary. This has been illustrated by some interesting papers and discussions in this Association relative to international duty in cases wherein the lives of subjects of foreign nations have been destroyed by mob violence. City of New Orleans *vs.* Abagnatto, 62 Fed. Rep. 240.; s. c., 26 L. R. A. 329, and Gianfortone *vs.* City of New Orleans, 61 Fed. Rep. 64; 24 L. R. A. 592, may be mentioned as illustrations in this connection.

But passing to a brief review of the trend of legislation on the subject. Pennsylvania took action as early as 1836 in

providing for a recovery and a convenient mode of charging damages against a city or county for property destroyed by mobs. In the matter of the Pennsylvania Hall, 5 Barr 205.

It is notable that in the case last cited a mob in Philadelphia, the City of Brotherly Love, destroyed a hall which was intended to be dedicated for the free discussion of liberty, slavery, etc. The violence occurred May 16, 1838, in less than two years after the act was passed.

Usually legislation has awaited events of such a character as to require it.

The act was local in its character, but after being renewed or changed in 1841 it was extended in 1849 to Allegheny County, and a recovery under it, in *County of Allegheny vs. Gibson's Son & Co.*, 90 Pa. St. 397, for the loss through the violence of a mob of property *in transitu* by railroad was sustained, which loss occurred in the historical railroad strike in that county in July, 1877.

The opinion of Mr. Justice Paxson in the last-named case contains an interesting review of the legislation in England as well as in this country.

In Massachusetts the Ursuline Convent in Charlestown was destroyed by a mob in August, 1834. This was a "No Popery" outrage. The duty of the commonwealth or of the municipality to make reparation was urged by some of the public-spirited men of that state, among whom Robert C. Winthrop may be mentioned. About four years after such destruction a law was enacted making towns and cities in the state responsible to the amount of three-fourths of the value of property within their limits destroyed by a mob.

New York was probably a little behind both Pennsylvania and Massachusetts in this matter, for *Darlington vs. Mayor*, etc., of N. Y., 31 N. Y. 164; s. c. 88 Am. Dec. 248, decided in 1865, was based on an act passed in 1855, under which the method of ascertaining the damages was less direct than the one provided for by the Pennsylvania statute. A perusal of the opinion in the case by Denio, C. J., is com-

mended to those who wish to trace the history or philosophy of such legislation. The basic legislation in England to which reference has been made had reference largely to rural districts. The early legislation in this country, as in Pennsylvania, seemed to imply that cities were to be called to account as the places in which mobs would commit injuries; but as the forces of the state can be called to the aid of other municipalities the statutes do not need to be local in character.

In South Carolina such consequence was attached to the principles on which the early legislation in England was based that a constitutional provision in the direction of enforcing such principles was adopted, and under an act passed in 1896 a recovery from one of the counties in that state of a penalty for death from lynching was foreshadowed, if not directly required, in the case of *Brown vs. Orangeburg County*, 55 S. C. 45; s. c. 44 L. R. A. 734.

Good reasons for such an enactment are stated in the opinion of the court by Mr. Justice Gary.

With a view to abbreviation, your Committee would cite, without comment thereon, 56 Am. Dec. 589, and 4 Wait's Actions and Defenses 645-6, and 20 Am. and Eng. Ency. of Law, 2d ed., 1207, and note; as making reference to other statutes on this subject and decisions which will further elucidate the tendency of legislation and judicial interpretation of the same.

To bring the matter more nearly to date, reference may be had to *Spring Valley Coal Company vs. City of Spring Valley*, 65 Ill. App. 571; s. c. 72 Ill. App. 629; s. c. 173 Ill. 497; *City of Chicago vs. Pennsylvania Co.*, 119 Fed. Rep. 497, and *City of Chicago vs. Manhattan Cement Co.*, 178 Ill. 372; s. c. 45 L. R. A. 848, and *Board of Com. vs. Church*, 62 Ohio St. 318; s. c. 48 L. R. A. 738.

These cases bring the statutes of Illinois and Ohio into contrast.

It is not readily perceived why the statute of the former state limits the right of recovery to three-fourths of the value

of the property destroyed by a mob or a riot, or excepts property in transit.

As to the three-fourths limit, it has been suggested that the other fourth is chargeable "to the weakness of human nature."

But yet again, why should not injuries to the person, especially if resulting in death without fault or negligence on the part of the sufferer, be actionable to some extent, as is the case under the Ohio statute?

The example of South Carolina and Ohio in respect to charging a municipality with some pecuniary responsibility for the loss of life from violence of mobs is commended. Very likely also injuries to the person when not resulting in death may deserve remuneration by a municipality unfortunate enough to be the scene of such lawlessness. The statutes of Wisconsin provide for the recovery of damages in favor of persons suffering bodily harm. (*Aron vs. Wausau*, 98 Wis. 592.) Perhaps other states have statutes of similar import.

One branch of the topic remains for presentation, to wit: Injuries to persons or property inflicted by members of labor unions or their representatives in aid of strikes.

It is well known that in the progress of strikes violence, not only to property, but also to persons, is to be apprehended and is almost inevitable. Such violence frequently prostrates its victims or causes them most serious and embarrassing loss. Oftener than otherwise, perhaps, it may come from irresponsible or unknown or unrecognized persons, though traceable, more or less certainly, to a strike directed and engineered by the union, and quite generally the victims of violence are unable to do much toward getting redress under existing laws. Should there not be some more effective remedy? Shall it be a charge upon a municipality exclusively? If the municipality should become chargeable under suitable legal restrictions, should it not have a right of action over against all who are responsible for the disturbance?

The questions proposed seem to answer themselves so far that argument by your Committee in behalf of enlarged legislation will be forborne.

Respectfully submitted.

A. J. McCrARY,  
THOMAS DENT,  
BURTON SMITH,  
WILLIAM P. BREEN,  
C. LARUE MUNSON.



**REPORT**  
**OF THE**  
**COMMITTEE ON COMMERCIAL LAW.**

**MAJORITY REPORT.**

*To the American Bar Association :*

The Committee on Commercial Law submit their report in pursuance of the resolution adopted at the last meeting of the Association, reading as follows, viz :

*“Resolved, That the part of the Report of the Committee on Commercial Law relating to modern commercial combinations be recommitted to the Committee for the ensuing year, and that said Committee be instructed to report specific remedies in legislative form for any unlawful combinations which may threaten commercial intercourse.”*

The resolution does not specifically state whether federal or state legislation is contemplated, but in view of the scope of the report thus recommitted and the national character of the Association, the Committee conclude that the resolution must be construed as referring to the federal power to regulate interstate commerce rather than to the state power to control commerce exclusively within the state. This conclusion is strengthened by the obvious impracticability of the naming or suggesting by this Association of remedies in legislative form for enactment by the forty-five different states of the Union under their respective constitutions for the protection of their domestic commerce.

The Committee therefore feel justified in their conclusion that under the instruction of the Association the commerce to be protected is that interstate and foreign commerce which is the subject of congressional regulation, the remedies intended

by the resolution being federal remedies through the medium of national legislation.

The resolution of the Association being thus construed, the function of the Committee thereunder is to recommend legislative measures for the protection of interstate and foreign commerce against illegal combinations, that is to say, to propose remedial legislation against combinations illegal under existing law. The Committee do not understand that they are required to propose legislation which shall make illegal any combinations or associations already adjudged to be valid, but only to provide redress in legislative form against combinations which are now unlawful.

Congress has, by recent legislation (Act of February 11, 1903), provided what the Supreme Court has held since the last meeting of the Association to be a prompt and efficient procedure on behalf of the government against illegal commercial combinations. It is true that this summary remedy is not available for private litigants. The Committee realize the importance of securing to every suitor speedy and certain redress for every wrong and of providing in every practicable way for the simplification of our remedial procedure. The Committee are not satisfied, however, that there is at present any emergency calling for the extension to private actions of this summary remedy provided for suits by the government against illegal combinations. It is, as a rule, the interest of the general public rather than the interest of any private individual capable of redress in private action which is threatened by combinations now adjudged to be unlawful obstructions to commerce.

The Committee are, therefore, of opinion that until the existing remedies recently provided by law for the protection of commerce against illegal combinations are further invoked and their efficiency further tested it is not necessary to propound additional legislation extending the summary procedure.

It is now provided by the Anti-Trust Act of Congress (section 7) that a party especially injured in his property or busi-

ness by unlawful combinations may recover treble damages as well as reasonable attorney fees. The Committee do not understand that a person so specially injured by unlawful combinations will not be protected by a court of equity if irreparable injury or other conditions to the exercise of equity jurisprudence exist. If it should be decided that the general jurisdiction of a court of equity, as distinguished from the summary jurisdiction under the act, does not extend to such cases of private litigants suffering special injury from unlawful combinations, the Committee would recommend legislation conferring the requisite jurisdiction. But the Committee are not satisfied that there is any present necessity for such legislation.

Under our dual form of government, interstate and foreign commerce controlled exclusively by the federal government is almost wholly carried on by corporations chartered by the several states. The difficulty of effectual governmental protection of such commerce is apparent. The embarrassment is greatly increased by the present system of competition between the states in offering corporate privileges as a means of state revenue to corporations permitted to transact business entirely outside of the limits of the states creating them.

In view of the limitation of the power of Congress under the Constitution, it is extremely difficult to apply a remedy without the co-operation of all of the states. The Committee are inclined to think that the evils incident to the present system cannot effectually be overcome without the adoption of some scheme of federal incorporation for companies carrying on interstate business. The Committee appreciate the grave questions of national policy as well as of the constitutional power of Congress involved in such a proposition and realize that the meaning of "interstate and foreign commerce," as a subject of federal regulation, may need extension by constitutional amendment.

The Committee do not deem themselves justified in further discussing the subject of federal incorporation, or in recom-

mending any specific form of congressional enactment in relation thereto, since the Association has referred this matter to the Committee on Jurisdiction and Law Reform for investigation and report.

GEORGE WHITELOCK,  
CHARLES F. MANDERSON,  
W. U. HENSEL,  
FREDERICK N. JUDSON.

#### MINORITY REPORT.

*To the American Bar Association :*

I am unable to agree entirely with the conclusions of the members of the Committee on Commercial Law signing the majority report.

The resolution of the Association quoted in the report does two things :

1. It recommits to the Committee the part of last year's report relating to modern commercial combinations, and
2. It instructs the Committee to report "specific remedies in legislative form for any unlawful combinations which may threaten commercial intercourse."

I think the Committee should have reported in legislative form specific remedies for "combinations illegal under existing law," and that it should also have considered the whole subject of modern commercial combinations recommitted to it by the resolution, and should have reported such further specific legislation as may be necessary and desirable upon that subject.

I asked the Committee to report and I ask the Association to approve as a further remedy "against combinations illegal under existing law" a proposed statute, as follows :

**"AN ACT TO PROVIDE ADDITIONAL REMEDIES FOR VIOLATION OF LAWS AGAINST UNLAWFUL COMBINATIONS.**

*"Be it enacted*, by the Senate and House of Representatives of the United States of America in Congress assembled, as follows :

"That any person specially injured in his business or property thereby may maintain a suit in any Circuit Court of the United States in the district in which the defendant resides or is found for an injunction to restrain the violation of any laws of the United States relating to combinations in restraint of interstate commerce, as well as for damages for such violation, or both."

I do not see anything in the recent legislation, the Act of February 11, 1903, referred to by the majority of the Committee, which at all relieves the Committee from the duty imposed upon it by the resolution.

The Act of February 11, 1903, chapter 554, simply provides for giving suits brought under the Act of February 4, 1887, chapter 104, and the Act of July 2, 1890, chapter 647, a preference in the courts upon the certificate of the Attorney General that the case is of general public importance. It provides no new remedy whatsoever. That act was before the Association at its last meeting. It had been passed more than six months previously, and I cannot see what it has to do with the question of the Committee's duties. Since last year's meeting the Supreme Court of the United States has decided the Northern Securities case, which had been advanced under the authority of this act. I cannot see that that decision in any way relieves the Committee of the duty imposed upon it by the Association.

The Act of July 2, 1890, chapter 647, which is entitled "An act to protect trade and commerce against unlawful restraints and monopolies," provides in its section 7 as follows:

"Any person who shall be injured in his business or property by any other other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may

sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The act which I asked the Committee to report upon favorably simply extends the suitor's remedy so that he may obtain an injunction in a proper case, as well as damages, so that he may have a chance to prevent the unlawful act which may irreparably injure him as well as secure damages after the wrong has been done.

The majority of the Committee seem to be in accord with me upon the proposition that the individual suitor should have the right which this act assumes to give him. They say:

"It is now provided by the Anti-trust Act of Congress (section 7) that a party specially injured in his property or business by unlawful combinations may recover treble damages as well as reasonable attorney's fees. The Committee do not understand that a person so specially injured by unlawful combinations may not be protected by a court of equity if irreparable injury or other conditions to the exercise of equity jurisprudence exist. If it should be decided that the general jurisdiction of a court of equity, as distinguished from the summary jurisdiction under this act, does not extend to such cases of private litigants suffering special injury from unlawful combinations, the Committee would recommend legislation conferring the requisite jurisdiction."

The only question, therefore, between the majority of the Committee and myself is whether under existing laws the individual has the right which this proposed statute assumes to confer upon him. The majority of the Committee are of the opinion that he has. I am of the opinion that he has not.

We are, therefore, on this subject pretty close together. We all agree that such a right as this proposed statute assumes to give the suitor is a right that he ought to have. They think he has it without the statute. I think the statute is necessary to give it to him. They "would recommend legis-

lation conferring the requisite jurisdiction" if it should be decided that it does not now exist. I think it is clear that it does not now exist, but that it should be conferred.

I do not see any reason why the individual suitor who has a right that has been violated or who has been affected by a wrong for which he wishes to seek redress should be confined to his remedy to one side of the court. I think both sides—equity and law alike—should be open to him. I understand the majority of the Committee to agree with me upon this proposition. It seems to me that no lawyer can differ with us on the subject.

The majority of the Committee well say :

"The Committee realize the importance of securing to every suitor speedy and certain redress for every wrong and of providing in every practicable way for the simplification of our remedial procedure."

This is a good Saxon proposition expressed in vigorous Saxon language and worthy of the masters of Saxon jurisprudence from whom it emanates. The basis of our common law is that for every unlawful act every person specially aggrieved thereby should have a remedy by suit in his own name in the courts of his country. He should not be dependent upon the diligence or the good will of any public officer to enforce his rights or to obtain his standing in court. We Saxons are a self-reliant race, jealous of our rights and unwilling to trust their enforcement to others.

It will be noted that the act proposed does not seek to extend to the individual suitor who brings his suit under this Act of July 2, 1890, any rights other or different from those which a suitor has who brings his suit under any other statute or who sues to enforce a right which he would have at common law. It simply gives him a right to maintain the suit as any other suit is maintained by any other suitor. It does not even confer upon him the privileges which the Attorney General has under this act and the Act of February 11, 1903, of joining parties outside of the jurisdiction of the court or advanc-

ing his case on the calendar. He is subject to the same embarrassments arising from the non-residence of necessary or important defendants as if he sued upon any other cause of action, and his suit must take its turn on the calendar like any other suit. The proposed act is not, therefore, what the majority of the Committee designate as "additional legislation extending the summary procedure." It is, however, what the resolution under which we are acting describes as "specific remedies in legislative form for any unlawful combination which may threaten commercial intercourse," and as such comes within the lines of what the Committee are instructed to report.

The only question, therefore, is whether the suitor already has the right which the proposed statute assumes to give him or whether the statute is necessary to confer the right.

On this proposition I am very sure that the learned members of the majority of the Committee are wrong and that I am right.

The Act of July 2, 1890, makes certain contracts and combinations in restraint of trade or commerce among the several states or with foreign nations illegal, and provides for their criminal punishment. It also provides (section 4) that

"The several Circuit Courts of the United States are hereby invested with jurisdiction to prevent and restrain the violation of this act, and it shall be the duty of the several district attorneys of the United States in their respective districts under the direction of the Attorney General to institute proceedings in equity to prevent and restrain such violation. Such proceedings may be by way of petition setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties plaintiff all shall have been duly notified of such petition the court shall proceed as soon as may be to the hearing and determination of the case, and pending such petition and before such final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

This gives the right to "the several district attorneys of the United States in their respective districts, under the direction



of the Attorney General," to institute proceedings to "prevent and restrain" violations of the act. The courts are given jurisdiction to entertain a suit if brought by one of the district attorneys under the direction of the Attorney General, but not otherwise. A private suitor, seeking to prevent an injury to himself, has no standing under this section.

Section 6 of the act provides for a forfeiture of property "owned under any contract or by any combination or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of the act and being in course of transportation from one state to another or to a foreign country."

Section 7 of the act provides that

"Any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found."

But he may sue for what? The act itself contains its own limitation.

He "shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee."

The authority of the private suitor to sue for violation of this act is confined by the act itself to a suit for damages. It gives him no right to sue for an injunction. He must wait until the blow is struck and the injury done and then bring suit to recover such damages as, under the strict rules of law, he may be able to prove, and then he may have such damages trebled and recover the costs of suit and a reasonable attorney's fee. He has no right to ask the intervention of the court before the act has been done or the wrong has been committed. He may, it is true, recover treble damages, but if his damages, however great in reality, are of such a nature that they are not susceptible of computation under the strict rules of law, he will recover three times nothing, and his lawyer will get the "costs of suit, including a reasonable attorney's fee." It is to correct what seems to me to be a serious, a vital, defect in

the remedial part of this statute that the act above set forth has been proposed. Its object is to give to the suitor an additional remedy which it seems to all the Committee desirable that he should have.

It will be noted that it is the same statute that makes the thing unlawful and provides the penalties and remedies for its violation. My argument is that no remedies for its violation can be invoked except those which the statute itself prescribes. A suitor cannot sue under this act except in the manner and for the relief which the act itself mentions.

We are not contemplating now something which is unlawful at common law, but rather something which is made unlawful by a statute. Some acts which would come under the prohibition of the statute might also be unlawful under the common law. Others certainly would not be. The suitor naturally wishes to found his suit upon the statute which is clear and of unmistakable meaning and which is certainly broader than the common law. He does not wish to be put to the hardship of groping through the common law in the hope that he may find that the statute to some extent was unnecessary or simply declarative and that he might have some rights independently of it. We are concerned only with remedies which exist for a wrong which is made a wrong by the statute and which might not otherwise be unlawful.

We are not concerned with a case in which an act is declared unlawful, but as to which no specific penalty is affixed or remedy provided, for in this case the statute not only specifically recounts the acts which are made unlawful, but provides the specific penalties and remedies for them.

It might be that if no remedy was provided for the act that was made unlawful the suitor might avail himself of the general remedies which exist for violation of law, but where by a single statute an act is made unlawful and penalties are affixed and remedies are provided, only those penalties can be attached to the act and only those remedies are open to the suitor.

Were it not for the fact that four lawyers of such learning and high standing at the Bar differ with me, I should say

there could be no doubt upon the proposition, for the unanimous decision of the Supreme Court of the United States in the case of *Minnesota vs. Northern Securities Company*, 194 U. S. 48, decided in April last, seems to leave the question without a doubt. The court say (page 68):

"It thus appears that the act (of July 2, 1890) specifies four modes in which effect may be given to its provisions. It is clear that the present suit does not belong to either of these classes. It is not a criminal proceeding (sections 1, 2, 3), nor a suit in equity in the name of the United States to restrain violations of the Anti-trust Act (section 4), nor a proceeding in the name of the United States for the forfeiture of property being in the course of transportation (section 6), nor an action by any person or corporation for the recovery of threefold damages for injury done to business or property by some other person or corporation (sections 7, 8)."

On page 70 the court say :

"We cannot suppose that it was intended that the enforcement of the act should depend in any degree upon original suits in equity instituted by the states or by individuals to prevent violations of its provisions. On the contrary, taking all the sections of that act together, we think that its intention was to limit direct proceedings in equity to prevent and restrain such violations of the Anti-trust Act as cause injury to the general public, or to all alike, merely from the suppression of competition in trade and commerce among the several states and with foreign nations, to those instituted in the name of the United States, under the fourth section of the act, by district attorneys of the United States, acting under the direction of the Attorney General."

The learned majority of the Committee say :

"If it should be decided that the general jurisdiction of a court of equity as distinguished from the summary jurisdiction under this act does not extend to such cases of private litigants suffering special injury from unlawful combinations, the Committee would recommend legislation conferring the requisite jurisdiction."

I confess that I cannot see what further decision upon the subject can persuade the majority of the Committee to join in

the approval of the proposed legislation if this decision of the Supreme Court of the United States, which seems squarely and fairly to cover the subject, does not persuade them.

The Supreme Court decision follows a long list of decisions of the Circuit Courts and the Circuit Courts of Appeal.

The same thing was held in 1893 by the Circuit Court of the United States for the Eastern District of Louisiana in the case of *Blindell vs. Hagan*, reported in 54 Fed. Rep. 40, and affirmed by the United States Circuit Court of Appeals for the Fifth Circuit; also in *Pidcock vs. Harrington*, 64 Fed. Rep. 821, by the Circuit Court for the Southern District of New York; *Greer, Mills & Co. vs. Stoller*, 77 Fed. Rep. 1, by the Circuit Court for the Western District of Missouri; *Gulf Co. vs. Miami Co.*, 86 Fed. Rep. 407, by the Circuit Court of Appeals of the Fifth Circuit; also by the Circuit Court for the District of Indiana in *Southern Co. vs. United States Express Co.*, 88 Fed. Rep. 659, and affirmed by the Circuit Court of Appeals of the Seventh Circuit, reported in 92 Fed. Rep. 1022; also by the Circuit Court for the Southern District of Ohio in *Locke vs. Standard Co.*, reported in 95 Fed. Rep. 978.

In *Blindell vs. Hagan* the court say :

“The injunction has been asked for, first, under the Act of 1890, known as ‘An act to protect trade and commerce against unlawful restraints and monopolies.’ This act makes all combinations in restraint of trade or commerce unlawful and punishes them by fine or imprisonment, and authorizes suits at law for triple damages for its violation, but it gives no new right to bring a suit in equity, and a careful study of the act has brought me to the conclusion that suits in equity or injunction suits by any other than the government of the United States are not authorized by it.”

In *Pidcock vs. Harrington* (*supra*) Judge Coxe says :

“At the argument the counsel for the complainant was asked whether he sought to maintain this action under the general equity principles of the common law or under the provisions of the Act of July 2, 1890. He answered that it was founded

solely upon the statute. It is unnecessary, therefore, to discuss the proposition whether or not the action can be maintained independently of the statute. The demurrer challenges the jurisdiction of this court to maintain under the act in question a bill in equity filed by a private individual and his solicitor. It is clear that the right to maintain such a suit is not expressly conferred by the act. Indeed, such a right is by implication denied—first, because a private person is given (section 7) the right to maintain an action at law, and, second, the district attorneys of the United States, under the direction of the Attorney General (section 4), are charged with the duty of commencing suits in equity. . . . The first three sections are penal statutes. They give no other remedy. Section 4 vests the right to institute proceedings in equity in the district attorneys of the United States, and, together with section 5, prescribes the procedure in such suits. Section 6 provides for the seizure and forfeiture to the United States of property illegally owned under the provisions of the act. So far, then, the act is a public act providing no private remedy. If it ended with section 6 there would probably be no pretense that it sanctioned a suit like the one at bar. What follows, however, in no way strengthens the complainant's position. The only section which gives a private remedy is the 7th, which is as follows: . . . . .

“But for this section, no private person would have any standing in court, and, as the only right conferred by it is the right to sue for damages in a court of law, it follows that the point presented by the demurrer is well founded. The precise question was decided in favor of the views here expressed in *Blindell vs. Hagan*, 54 Fed. 40, affirmed 56 Fed. 696, 6 C. C. A. 86. The demurrer is allowed.”

In *Greer, Mills & Co. vs. Stoller* (*supra*) the court say :

“The statute, being highly penal in its character, must be strictly construed, and having created a new offense and imposed new liabilities, and having provided the modes of redress to the public and the private citizen by established rules of construction these remedies are exclusive of all others.”

In *Southern Co. vs. U. S. Express Co.* (*supra*) the court say :

“The anti-trust law of July 2, 1890, has wrought no such change in the law as will enable the court to enforce its pro-

mittee call its "summary procedure," however important and valuable it may be, is an incident only to the main object of the act, which is to make certain things unlawful.

It will also be noticed that the proposed act, which I asked the Committee to report and which I now ask the Association to approve, does not attempt to give the individual any standing in court except where he is "specially injured in his business or property." Where the injury that he suffers is only that which the community in general suffers, and where he is injured only as a member of the community and not specially affected, the remedy is left to the several district attorneys and the Attorney General, who are the representatives of the community. But where the individual is specially injured—that is, injured in a way in which the general public is not injured—he should have a right of action in his own name. The statute itself (section 7) gives him that right of action, but limits him to the recovery of damages. The proposed act simply extends the jurisdiction of the court so it may in a proper case protect him before the wrong is done and the injury becomes irremediable, as well as afterward.

The purpose of the proposed bill might be effected by a simple amendment of section 7 of this act, and I should have no objection to its taking that form. It might be the most convenient legislative method of accomplishing the result. All I ask is that the individual who is "specially injured in his business or property" may have all the remedies which the general practice of the courts provide instead of only one-half of them—that he may have a standing on the equity side of the court as well as on the law side.

I asked the Committee to report and I ask the Association to approve the following act:

**"AN ACT TO FURTHER REGULATE INTERSTATE COMMERCE.**

*"Be it enacted* by the Senate and House of Representatives of the United States of America, in Congress assembled, as follows:

**“SECTION 1.** That no corporation, after this act takes effect, shall engage in interstate commerce in the United States unless it shall have first filed its articles of incorporation, or a certified copy thereof, in the office of the Secretary of the Department of Commerce and Labor.

**“SEC. 2.** On filing such articles, or such copy, every corporation shall pay to such Secretary for the use of the United States the following tax: Twenty cents on each one thousand dollars of capital stock authorized for each first one hundred million dollars or under. Twenty-five cents per one thousand dollars for the second one hundred million dollars, and so on, at a rate per one thousand dollars increasing five cents for each additional one hundred million dollars of capital stock authorized.

**“SEC. 3.** Upon increase of capital stock or merger or consolidation of corporations, there shall be paid to such Secretary for the use of the United States such sum as would have been required had the original capital stock been the same as the total stock, new and old, after the increase, merger or consolidation, less what was paid at the time of the original filing of the articles of incorporation, or the copy thereof, and of any former increase.

**“SEC. 4.** Such corporation shall pay to the United States annually thereafter a license fee of ten cents on each one thousand dollars of authorized capital stock for the first one hundred million dollars or under, and twelve and a-half cents per one thousand dollars for the second one hundred million dollars, and so on, at a rate per one thousand dollars increasing two and one half cents for each additional one hundred million dollars of capital stock authorized.

**“SEC. 5.** In case any corporation fails to make any of the payments hereinbefore directed, it shall be unlawful for it to continue thereafter to engage in interstate commerce.”

I heartily agree with the majority of the Committee in their opinion

“that the evils incident to the present system cannot be effectually overcome without the adoption of some scheme of federal incorporation for companies carrying on interstate business.”

Of all the bills heretofore proposed for a national incorporation act, the one drawn by Professor Horace L. Wilgus, of the University of Michigan, seems to me to be the most carefully drawn and to contain the most desirable and remedial features. The provisions of my proposed bill are taken in part from section 80 of Professor Wilgus's proposed bill. The rate of license fee to be paid upon the filing of the articles of incorporation is that recommended by Professor Wilgus. Professor Wilgus, however, proposes the payment of a license fee only once—at the time of the filing of the articles of association. I think that an annual license tax should be paid thereafter, so that the treasury shall be in receipt of a continued instead of a sporadic income from that source. I have made the annual license fee one-half of the amount of the original license fee paid at the time of the filing of the articles of incorporation, and have added this provision to the bill. I am not, however, at all wedded to any specific rate, either for the original license fee or for the annual license tax thereafter. It may be greater or less than the figures above mentioned. The provision of the bill which I consider most important is the grading of the original license fee and subsequent license tax up instead of down. It is usual, under present state laws, to make a company with a larger capitalization pay a proportionately less license tax than one of a smaller capitalization. I think the company with the larger capitalization should pay proportionately more. There is certainly no justice in allowing it to pay less, and if we once establish the principle, or get into the habit of grading the license tax up instead of down, so as to make the corporation with a larger capital pay proportionately more than the corporation with a lower capital, we have at



once a remedy in the hands of the people and their representatives, easy to be applied, for the evils of great capitalizations and extensive combinations. The people's representatives will then have their hand upon the brake, and they can put just such pressure upon the wheels as the necessities of the situation may require. They may levy such a tax as will simply give the smaller capitalization a slight advantage over the larger one, or they may levy such a tax as will put enough of a burden upon the larger corporation to prevent its indefinite extension or extension beyond the point of usefulness to the community. It may, if it will, impose a tax which would be prohibitive at a certain point, so that no corporation would ever be formed with more than a certain capitalization. It is all left in the hands of the taxing power—the representatives of the people.

In the report of the Committee of last year the whole subject of such combinations and of the remedies for the evils incident thereto was discussed. Among the remedies suggested was this graded system of license taxation. The resolution adopted by the Association after the consideration of this report provided not only for the instruction of the Committee to "report specific remedies in legislative form for any unlawful combinations which may threaten commercial intercourse," but that the whole report, so far as it related to "modern commercial combinations, be recommitted to the Committee for the ensuing year."

By the resolution of the Association, therefore, the whole subject is before the Committee. It seems to me that the majority of the Committee take a narrow view of the Committee's functions and duties when they limit their labors to the consideration of the question of "specific remedies in legislative form" for combinations which are already unlawful. I think it was the intention and desire of the Association as expressed in its resolution that the Committee should report specific remedies not only for combinations unlawful under existing laws, but also specific remedies for the evils of such

combinations, even though existing laws might not reach them. If the general law as it stands to-day is in any respect deficient and needs to be strengthened or extended, I think it is quite within the function and the duty of this Commercial Law Committee to so report. I do not think that the American Bar Association can afford to ignore this question or to avoid its responsibility in connection with it.

The American people naturally look to this Association to take the initiative upon this subject. If we will wrestle with the question, they are quite content to let us work it out in our conservative lawyer-like way. If the American Bar Association does not take it up, the only result will be that other people or other bodies less competent to deal with it will take hold of it. It is a question of such profound importance and such extreme delicacy that it seems to me much better that the initiative should come from the American lawyer rather than from the American politician or the American demagogue.

I assume that there is general accord upon the proposition that some remedy is necessary. The Congress of the United States in the Act of July 2, 1890, and in other acts before and since that date, have adopted remedial measures of more or less stringency. Most, if not all, of the state legislatures have done the same thing. All political parties in their platforms declare in favor of remedial legislation on this subject, and the general sentiment of the community without regard to party seems to be in favor of some effective action. It is by no means a partisan question. It is the one question on which all parties and all platforms seem to agree. It seems under these circumstances to be eminently fitting that the American Bar Association should take the lead, so that the united community may have the assurance that the remedial measures proposed are not only effective, but conservative, such as shall accomplish without fail the purpose for which they are intended, but with the least possible disturbance of business and vested rights.

I know of no better weapon that the community has for its defense than the weapon of taxation. The necessity for taxation is ever present. The power of taxation in the representatives of the people is the one power of government which is never questioned. Discretion vested in the representatives of the people as to the objects and methods of taxation is the one thing which our race, even in its darkest moments, has never surrendered. For the right of the representatives of the people to levy taxes to the extent which seemed to them best, and in their own way, the wars of liberty on both sides of the ocean have been fought.

The corporation is the creature of the state. As it exists only by the will of the people, its rights are not God-given, but charter-given. The people who give the corporation the right to exist and the right to carry on business and to earn profits and dividends may fairly impose such conditions upon the exercise of its powers and fairly lay such burdens upon it in the way of taxation as a condition of its existence, as may seem to them just. We are not considering now the subject of a direct tax upon the property of corporations, and so do not come within that clause of the Constitution relating to equality of taxation. We are considering only the license tax—the sum which the corporation shall pay to the people for its right to exist and to do business. In granting this right, the people may fairly take into consideration the benefits which the community may derive from the business of the corporation and also the evils it may suffer from it. The general sentiment of the community is that the process of combination has been going too far and that some brake should be put upon the wheels. If unchecked, the great combinations may soon come to be—if indeed they have not already become so—a great public danger. Legislatures are corrupted by them. Executive action is influenced by them. Even the integrity of the courts, the last bulwark of Saxon liberty, does not at all times escape suspicion. I know of no brake that can be applied to the wheel with less injurious

disturbance and with greater beneficial effect than the brake afforded by a license tax for corporations graded up instead of down. The handle of the brake will always be in the hands of the people. They may increase the tax if combinations are coming too fast or growing too big. They may lessen it if the danger disappears or becomes less imminent, or they may find by experiment or otherwise just the rate which will accomplish the most good and the least harm, and adhere to that rate. Whatever results from taxation is for the people's benefit, and so far as it goes will make other and, perhaps, more onerous methods of taxation unnecessary.

I am the more convinced as to the effectiveness of this method of regulating large combinations in the form of corporations when I see the opposition to it that is made by the combinations and corporations affected. They know what hurts them. They are quite reconciled to most other methods of regulation, especially those that do not regulate, but they are quite unanimous in opposition to this most effectual method. I think the people will be quite as unanimous in supporting it.

It is no answer to the argument for the proposed legislation that it would affect only those corporations which are engaged in interstate commerce; that corporations engaged simply in production as distinguished from commerce would not be affected by it. If Congress will set the pace and will pass wise and effective laws regulating corporations which are engaged in interstate commerce and which clearly come under their jurisdiction, so much good will be done and an example will be set which may be the states which have control over other corporations will see fit to follow. At any rate, there is no reason why Congress should fail to pass wise legislation upon subjects which come within its jurisdiction, because on subjects which do not come within its jurisdiction the separate states might act less wisely. The passage of a law on the lines proposed would, I believe, go a long way toward settling in the interest of the people the very important and very vexa-

tious trust question which occupies so large a share of the attention of the people and the press, of state legislatures and of Congress.

I regret exceedingly that the report of the Committee could not be placed in the hands of the Secretary in time to be printed and distributed before the meeting. It is not my fault. I did not receive the majority report until September 15th, and I am sending that report with my own minority report to the Secretary for printing on the 16th.

Respectfully submitted,

WALTER S. LOGAN.

**REPORT**  
**OF THE**  
**COMMITTEE ON INTERNATIONAL LAW.**

*To the American Bar Association :*

Your Committee on International Law respectfully reports as follows :

In accordance with the custom of the Association we submit a brief statement of the more important events of the year in the field of international law :

**I. ARBITRATION.**

The convention agreed to at the International Peace Conference at The Hague, and subsequently ratified by twenty-six governments, has been the subject of consideration by many of the governments which were parties to it. Doubts arose whether its provisions were obligatory or optional. To remove these doubts a treaty was made between Great Britain and France in October, 1903, by which the two governments agreed that "differences of a judicial order or relative to the interpretation of existing treaties between the two contracting parties which may rise, and which it may not have been possible to settle by diplomacy, shall be submitted to the permanent Court of Arbitration established by the convention of July 29, 1899, at The Hague on condition, however, that neither the vital interests nor the independence or honor of the two contracting states, nor the interests of any states other than the two contracting states are involved."

We append to this report a copy of this treaty.

Similar treaties have been concluded between Great Britain and Germany, Spain, Sweden and Norway, respectively; and also between France and Italy and France and Spain.

The language of the Hague convention may fairly be said to bind the contracting powers to undertake to have recourse to arbitration in cases relating "to questions of right, and primarily to those affecting the interpretation or application of treaties in force, so far as these affect neither the vital interests nor the national honor of the parties in dispute." Yet, nevertheless, with nations as with individuals, it is well sometimes to recall existing obligations, to state them explicitly and take a pledge to observe them sacredly.

For this reason the American National Arbitration Committee, which was appointed at the American Conference on that subject held in Washington in April, 1896, called another conference at the capital in January last. At this conference the subject was fully discussed by many prominent citizens, and it was unanimously resolved to recommend to our government to enter into a treaty with Great Britain "to submit to arbitration by the permanent court at The Hague, or in default of such submission, by some tribunal specially constituted for the case, all differences which they may fail to adjust by diplomatic negotiations."

A copy of the resolutions adopted by this conference is appended to this report.

At the annual meeting of the New York State Bar Association, held at Albany in January last, it was unanimously resolved that the Association concur in these resolutions.

When we remember the prominent part that the American Bar Association has taken in advocating international arbitration, and the resolutions adopted by it on that subject in 1896, 1897 and 1899, your Committee feels that this Association will now gladly unite with our brethren in New York and co-operate with the National Arbitration Committee in promoting the adoption of treaties such as are recommended by it.

On this same subject of arbitration we have further to report that in the matter of the Venezuelan claims the permanent

Court of Arbitration decided that the claimants who had sent fleets to notify Venezuela that their patience was exhausted and that the time for payment had come, were entitled to priority in the payment of their claims. This is a curious application of the maxim :

*Leges vigilantibus, non dormientibus subveniunt.* It is in strict analogy to the priority acquired by the filing of a judgment creditor's bill, or a notice of *lis pendens*.

Complaint has been made of the decision, but your Committee cannot say that this is well founded. It is undoubtedly needful and just to respect the rights of the weak. But the strong also may have rights. And their citizens ought not to suffer because they are members of a strong government.

If the telegrams from Venezuela are to be believed, that delinquent republic will pay off these claims at an earlier day than that fixed by the decision of the court.

We have also to report that the Special Alaskan Boundary Tribunal, created by the treaty of January 24, 1903, rendered its judgment October 20, 1903. This tribunal was composed of Lord Chief Justice Alverstone, Sir Louis A. Jette, Lieutenant Governor of Quebec, and Mr. Allen B. Aylesworth, K. C., on the part of Great Britain, and Secretary Root, Senator Lodge and Ex-Senator Turner on the part of the United States. They unanimously agreed that the boundary should commence at Cape Muzon, and that the Portland Channel was the channel to the north of Pearse and Wales Islands. But on the remaining questions the judges divided. Lord Alverstone and the American members held that the boundary of Alaska extended so far to the eastward as to give to the United States a continuous strip of coast on the mainland extending ten marine leagues from the bays and inlets of the ocean. These are very deep, and the decision consequently gave to the United States a strip of territory claimed by Canada and valuable for its gold.

The two judges from Canada dissented. In effect, therefore, the decision was that of one judge, Lord Alverstone.



Your Committee does not criticise the correctness of this decision. But it submits that this decision would have commanded more general confidence if it had been made by the Hague Tribunal, of which no citizen of either of the litigating powers should have been a member. It is important in international as well as in private controversies that the members of a judicial tribunal should be free from all suspicion of bias.

Two encouraging events of the present year are the meeting of the Inter-Parliamentary Union at St. Louis and the International Peace Congress to be held in Boston in October. The presence at both of many distinguished men from all parts of Europe cannot fail to stimulate public sentiment in this country.

The Annual Arbitration Conference at Mohonk was never better attended than it was this year.

The United States have done much to promote the settlement by arbitration of international disputes. When once our people realize that justice between nations ought to be attained by peaceful means our influence will be exercised in favor of the resort to such means and against the arbitrament of the sword. And that influence, if we are true to our national traditions, will become more powerful every year.

## II. THE RUSSO-JAPANESE WAR.

These suggestions seem especially appropriate at the present time, when the war between two of the "contracting powers" has already caused fearful bloodshed, and must entail a heavy burden of taxation upon peasants, who are hardly able to bear it.

It is not for your Committee to pass any judgment upon the merits of this war; but we do submit that the Japanese claim is of a character that affords just ground for mediation under the second title of the Hague convention. The third article declares that "the signatory powers think it to be useful that one or more powers which have no part in the conflict

may offer of their own volition, so far as circumstances may make it appropriate, their friendly offices or their mediation to the states engaged in the conflict."

The Japanese claim is that the war is undertaken to compel Russia to evacuate Manchuria, which she has repeatedly promised to do. The United States are committed to the policy of "the open door" in China, which means in plain English free trade with all parts of that empire, subject only to moderate duties for revenue. As long as Russia remains in possession of Manchuria a different policy will prevail there. It is, therefore, for the interest of the United States and in accordance with our declared policy, that Russia should evacuate Manchuria.

On the other hand it is natural that Russia should desire free commercial access to Port Arthur, which is one of the best ports on the western shore of the Pacific. And the United States are in a position to point out to Russia that it is quite possible to have convenient commercial access to a port free from ice all the year round, without owning or dominating that port.

Montreal and Quebec are in the same position relatively to Portland in Maine, that the Russian Siberian ports are to Port Arthur. They are icebound during the winter. Portland harbor is always open. A railroad from the Canadian ports to Portland has for many years given them access to the ocean in winter. Yet no British troops have ever been stationed on this railroad or guarded the port at its southern end.

The United States might, as it seems to your Committee, very properly avail itself of the provisions of the Hague convention and make an endeavor to put an end to the further shedding of blood in Manchuria.

Apart from the opportunity thus afforded there are many questions of international law to which this war has given rise to which your Committee will now draw the attention of the Association. After several months of negotiation, pacific relations between Japan and Russia were terminated on Feb-

ruary 6, 1904, when the Japanese Minister at St. Petersburg, on instructions from his government, asked for his passports, at the same time giving notice that Japan would "take such independent action as she might deem necessary." Two days later hostilities began by the sinking of two Russian cruisers at Chemulpo, Korea, and a midnight torpedo attack on the Russian fleet at Port Arthur. On the same day Japanese troops were landed in Korea. Formal declaration of war on the part of Russia issued on February 10th, in which complaint was made that Japan, "without advising us of the fact that the breach of (diplomatic) relations would in itself mean an opening of warlike operations, gave orders to its torpedo boats to suddenly attack our squadron in the outer harbor of the fortress of Port Arthur." The Japanese declaration of war was issued on February 11th.

Declarations of neutrality were issued by the United States and Great Britain on February 11th. Both declarations, in conformity with the practice of these powers, were long, and minutely defined the duties of neutrality to be observed by their respective citizens and agents. That of the United States was a reproduction, in form and substance, of similar declarations of neutrality issued in 1870 and 1877 in connection with the Franco-Prussian and Russo-Turkish wars. A copy of this proclamation is appended to this report.

The declarations of the continental European powers and that of China appeared within the following week, and, as is usual with those nations, were brief. That of France was accompanied by instructions of the Minister of Marine to its various naval officials, and, except for a change of names, reproduced similar instructions issued at the outbreak of the Spanish-American war. It is to be noted, however, that these instructions do not limit the stay of belligerent vessels in French ports to any specific period and apparently permit the supply of coal to any amount. Should the Russian Baltic fleet sail for the Far East, as announced, these instructions may become important.

On February 22d, the Russian government brought to the attention of the neutral powers the alleged violation by Japan of international law in the manner of beginning the war. The note specified the sinking of the Russian vessels at Chemulpo (previously isolated by the cutting of telegraphic communication), the midnight attack on the fleet at Port Arthur and the landing of troops in Korea, a state whose independence and integrity, it was averred, had been recognized by Japan and the other powers. The reply of Japan, issued March 1st, pointed to the preparations for war made by Russia for ten months past (thereby precluding the idea of unpreparedness) and insisted that the term "independent action" in the notice of the Japanese minister's withdrawal from St. Petersburg included the opening of hostilities; and that besides international usage, as well as the conduct of Russia herself with respect to Finland in 1807, did not demand formal declaration of war previous to hostilities. It is a notable instance of the respect which a nation may pay to the public opinion of the world, that the Japanese government should publish and distribute a translation into English of the correspondence between Japan and Russia prior to the war. Copies may be obtained from the Japanese Legation at Washington.

On the 28th of February Russia promulgated "rules which the imperial government will enforce during the war with Japan." These provided that "Japanese subjects are authorized to continue under the protection of Russian law, to reside and follow peaceful callings in the Russian Empire, except in the territories forming part of the imperial lieutenancy in the Far East." Japanese subjects in Manchuria and Pacific Siberia were, therefore, required, contrary to modern usage, to leave at once, without opportunity to settle their affairs. The Japanese government, on the other hand, announced that Russian subjects might reside and carry on business in Japan on condition of registration, and would receive the protection of the laws.

With reference to enemy's vessels found in port at the outbreak of the war, the position taken by both belligerents was less liberal than the practice followed in nearly all of the great wars of recent times, beginning with the Crimean. By the Japanese decree of February 9, 1904, Russian merchant vessels were allowed seven days only in which to load and leave Japanese ports. The same period was allowed to Russian vessels in foreign ports and loading for Japan to depart on their voyage to that empire. The Russian rules of February 28th accorded to Japanese vessels lying in Russian ports on February 10th (the date of the declaration of war) forty-eight hours in which to load cargo and depart, counting from the moment of the publication of notice by local authorities. No mention is made of Japanese ships bound for Russian ports at the outbreak of the war. This contrasts unfavorably with the thirty days of grace granted by President McKinley's proclamation of April 26, 1898, and with the six weeks period of the Crimean War.

Important questions of international law have arisen in relation to seizures by the Russians of neutral vessels. On February 26th two British and one Norwegian ship, carrying coal to Japan, were seized in the Red Sea, but were released two days later on the ground that they had been taken before coal had been declared contraband by the Russian government.

On July 15th the German steamer "Prinz Heinrich," bound for Yokohama, was stopped by the Russian volunteer fleet steamer, "Smolensk," and the mail sacks on board, destined for Japan, were removed. A day or two later the mail was restored to another easternbound steamship, with the exception of a certain correspondence said to be from a German arms factory to a Japanese address in Nagasaki. A protest by the German government against the seizure is said to have brought forth a promise from the Russian government that similar incidents should not be repeated.

On July 16th the British steamer "Malacca" was seized in the Red Sea by the Russian volunteer cruiser "St. Petersburg" for carrying contraband. These two Russian cruisers had some days earlier passed from the Black Sea through the Dardanelles under the merchant flag, but had subsequently been converted into war vessels. A prize crew was placed on board the "Malacca," and she was started through the Suez Canal for a Russian port. Her release was demanded by the British government on the ground that the capturing vessel had no belligerent status inasmuch as she had previously passed through the Dardanelles in defiance of the treaties of 1856 and 1871, closing them to vessels of war. The Russian government yielded, and on July 27th, by previous arrangement, the "Malacca" was released at Algiers after a *pro forma* examination by the British and Russian consuls at that place.

On the 8th of August Mr. Balfour stated in the House of Commons that the British government maintained that under the treaty of Paris the Russian government had no right to send through the Dardanelles a vessel under the flag of a merchantman, which was adapted to be used as a cruiser, and was in point of fact afterwards equipped as such.

He added :

"We remonstrated, therefore, very strongly with the Russian government, and it showed a desire to meet us, but an important thing to remember is that it is an entirely new issue. It is the first time any such incident has occurred since the Treaty of Paris or the Treaty of London, on which our objection is based, have come into existence. If the Russian government was right in its contention, the captors of the "Malacca" would have had the right to take her to a Russian port and before a prize court. If we were right, there was no justification for her seizure.

"Our object was to prevent this new incident developing into one which would cause a great strain between the two countries—a condition of strain which might very easily, in my opinion, have developed further.

"The actual arrangement reached was therefore in the nature of a compromise. The Russian government gave up the idea of taking the "Malacca" to a Russian port and examining her cargo or trying her before a prize court. We, on the other hand, agreed that she should be taken to a neutral port, and after a purely formal examination of her cargo be then and there released. It was also arranged that the two volunteer fleet steamers were no longer to act as cruisers.

"The whole of our contention was thus, I think, granted, and I confess I have not the smallest feeling of regret that we did our best to meet the Russian government, which on its side made no impracticable suggestions in the matter. The government has not admitted the right to capture by allowing an examination of the "Malacca."

It will be remembered that during our own Civil War the construction of the "Alabama" and other Confederate cruisers, and their departure from British ports were excused on the ground that they were not equipped as vessels of war at the time. But the Geneva Arbitration Tribunal decided against this contention on the ground that they were originally adapted to be used as war vessels. No doubt the same is true of these two Russian cruisers.

Several other British and German vessels which had been seized as prizes by these cruisers prior to the above arrangement being known to the Russian naval commanders were also released.

About the same time other seizures were made by the Russian fleet in the Pacific. On July 23d the British steamship "Knight Commander" was stopped by vessels of the Russian Vladivostok squadron off the coast of Japan. Evidence of contraband being discovered, the persons on board were removed and the ship fired into and sunk. The case came before the prize tribunal at Vladivostok, and the act of the Russian commander was sustained on the ground that the ship was carrying machinery and other contraband articles destined ultimately for Chemulpo (Korea), and that there was not enough coal on board to navigate the vessel to the nearest Russian port. A part of the cargo was owned by American

citizens, and protests against the sinking of the vessel have been made both by the British and American governments. It is understood that the case has yet to come on appeal before the admiralty tribunal at St. Petersburg. Possibly the contention may be submitted to the Hague Tribunal.

On this subject the British position was thus stated by Mr. Balfour in the House of Commons:

“Regarding the “Knight Commander,” she was sunk on the ground that it was extremely difficult to bring her into port, and because, in the opinion of the Russian officers, she was carrying contraband. We adhere to our opinion that these circumstances, whether true or not, afford no justification for sinking a neutral ship. We have not abandoned our position in the smallest degree.”

The code promulgated by the Navy Department for the use of the United States Navy contains the following article (50):

“If there are controlling reasons why vessels that are properly captured may not be sent in for adjudication, such as unseaworthiness, the existence of infectious disease, or the lack of a prize crew, they may be appraised and sold, and if this cannot be done they may be destroyed. The imminent danger of recapture would justify destruction, if there should be no doubt that the vessel was a proper prize. But in all such cases all of the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered.”

This article is in accordance with the rule stated by Richard H. Dana in his note to Wheaton's “International Law.”

The capture of the German ship “Arabia,” proceeding from Portland, Oregon, to Hong Kong and Yokohama, having on board a cargo of American flour, has raised the question of the right of belligerents to declare as contraband provisions not proved to be intended for the use of the enemy's military forces. In this case, the prize court is reported to have released the steamer and so much of the flour as was consigned to Hong Kong, but condemned the remainder and certain railroad material destined for Yokohama.



The Russian list of absolutely contraband articles, under the rules issued February 28th, includes the following :

“Every kind of fuel, such as coal, naphtha, alcohol and other similar material.

“Generally, everything intended for warfare by sea and land, as well as rice, provisions and horses, beasts of burden, and others which may be used for a warlike purpose, if they are transported on the account of or are destined for the enemy.”

The Russian imperial order of April 21st added raw cotton to the above list.

On June 10, 1904, Mr. Hay addressed a circular dispatch to the several American ambassadors in Europe, in which he indicated the position which the government of the United States would take with reference to coal and cotton.

As to “coal and other fuel and cotton,” he said, “no sufficient presumption of an intended warlike use seems to be afforded by the mere fact of their destination to a belligerent port.

“The recognition in principle of the treatment of coal and other fuel and raw cotton as absolutely contraband of war might ultimately lead to a total inhibition of the sale by neutrals to the people of belligerent states of all articles which could be finally converted to military uses. Such an extension of the principle by treating coal and all other fuel and raw cotton as absolute contraband of war simply because they are shipped by a neutral to a non-blockaded port of a belligerent, would not appear to be in accord with the reasonable and lawful rights of a neutral commerce.”

A copy of this circular is appended to this report.

A novel question was raised by the Russian government on April 14th, in a circular notice to the neutral powers, that her military authorities in Manchuria had declared that neutral steamers, having on board wireless telegraphic apparatus and communicating war news to the enemy, would be seized in the zone of Russian naval operations and the newspaper correspondents treated as spies. The government of the United States confined herself to an acknowledgment of the

notice, considering that the use of wireless telegraph by newspaper correspondents in war may be properly subject to regulation, and that to protest against the Russian note would be to establish a precedent which might cause embarrassment in any future war to which the United States might be a party.

Another question that has arisen during the course of the present war grows out of the escape of several Russian men-of-war into neutral ports. In some cases these men-of-war have arrived in an unseaworthy condition. These vessels have been allowed to make certain repairs in order to make them seaworthy. But where the repairs have been of such a character as necessarily to continue for a long period, the German government, which controls the Kaio-Chow Bay, which is the German concession on the Shan-Tung Peninsula, has required the vessels to disarm. It has also required vessels, which were in a seaworthy condition, to leave the harbor within twenty-four hours or to disarm. But one of the Russian torpedo boat destroyers, the "Ryeshitelni," took refuge in a Chinese port. The Japanese claimed that the alleged disarmament of this destroyer was a pretense, and that she had not in point of fact been disarmed, and that the Chinese government had no power to enforce such disarmament. It, therefore, sent a vessel into the Chinese port of Chefoo and seized the Russian vessel. Naturally the Russian government has protested. Its consul at Chefoo has reported that the breech blocks of her guns and all her small arms had been removed, and that her engines had been rendered useless. There does not appear to be any serious question as to the law of the case. There can be no doubt that the only condition upon which a belligerent man-of-war can remain in a neutral port is that it should absolutely be disarmed. But it is easy to see that in the port of a weak government this disarmament might be illusory, and that the neutral power would not be able to enforce compliance with the rule of international law. In such case it would seem reasonably clear that the adverse belligerent could itself enforce the disarmament. But actually

to seize and capture the belligerent vessel would seem to be a violation of the neutrality of the neutral state. The rule of international law requires that when the belligerent departs from the neutral port a period of twenty-four hours must elapse between its departure and that of a vessel of the adverse belligerent. Any conflict between the two is prohibited within a marine league of the neutral port. It follows, of necessity, that hostilities within a neutral port are a violation of the law of nations. On the other hand it is equally clear that a neutral port cannot lawfully be used as a base for the naval operations of either belligerent.

The progress of Japan in the art of war is indicated from the legal standpoint by the organization of Japanese prize courts. Some interesting questions in international law have been adjudicated by these courts. The only report of their proceedings to which your Committee has had access is contained in the *London Times*. The subject is one of such interest to the Association that we append to this report a copy of the statement of these decisions.

### III. PRIVATE INTERNATIONAL LAW.

In conclusion, your Committee desire to draw attention to the progress that is making in the formulation of a code of private international law, which shall embody an agreement of those governments which are parties to it, especially on the following subjects:

1. Marriage and Divorce.
2. Transmission and Authentication of Documents.
3. Commissions for Taking Testimony.
4. Successions to the Estates of the Dead.
5. Bankruptcies.
6. Regulation of Suits by or Against Foreigners.

Three conferences upon these subjects, composed of representatives from the principal governments of Europe, have

been had, and treaties embodying their agreements have been drafted.

In February, 1903, the Legislature of Massachusetts adopted the following resolution :

*Resolved*, That the Congress of the United States be requested to authorize the President of the United States to invite the governments of the world to join in establishing, in whatever way they may judge expedient, an International Congress, to meet at stated periods to deliberate upon questions of common interest to the nations, and to make recommendations thereon to the governments.

Whether this recommendation should ultimately be adopted or not, it must be noted that numerous conventions on separate subjects have been held by different nations, the conclusions of which have been adopted by the governments which were parties to the convention, and become part of the system of private international law. The international rules of navigation which regulate the sailing of vessels, the signals they shall give and the precautions they shall take against collision, are a notable instance. The Postal Union is another. The convention for the protection of submarine cables and the union for the protection of industrial property are others. The latter embodies an agreement in reference to the rights of inventors and trade-marks. It has an international bureau of administration and registry, at Berne.

Many of the states on the continent of Europe have entered into a convention respecting international railroad transportation. A very interesting account of the progress that has been made by nations upon this subject is to be found in an article in the *Yale Review* for May, 1903, written by one of the members of our Association, Simeon E. Baldwin, one of the Judges of the Supreme Court of Errors of Connecticut, and Professor of Law in Yale University.

In addition to the conventions mentioned in this article, there is another conference to which many of the commercial nations of Europe, and also the United States have agreed,

but which has not yet been held. This is the outcome of an International Maritime Conference that was held at Hamburg in 1902, and is to deal with the subjects of collision, and the rights both of ship and cargo owners growing out of collisions, and also the subject of salvage.

All such agreements tend to facilitate the business of the citizens of different nations, who every year are entering into closer relations with each other, and must in the end be powerful factors in the preservation of peace.

All of which is respectfully submitted.

EVERETT P. WHEELER,  
*Chairman.*

R. M. VENABLE,  
H. ST. GEORGE TUCKER,  
JAMES F. BARNETT,  
*Committee.*

## SCHEDULE 1.

## ANGLO-FRENCH TREATY OF 1903.

*Translation.*

The government of the French Republic and the government of H. B. Majesty, signatories of the convention for the pacific settlement of international disputes, concluded at The Hague, July 29, 1899,

Considering that by Article 19 of this convention the high contracting parties reserved to themselves the conclusion of agreements in view of recourse to arbitration in all cases which they judged capable of submission to it,

Have authorized the undersigned to agree as follows:

## ARTICLE I.

Differences of a judicial order, or relative to the interpretation of existing treaties between the two contracting parties, which may rise, and which it may not have been possible to settle by diplomacy, shall be submitted to the permanent Court of Arbitration established by the convention of July 29, 1899, at The Hague, on condition, however, that neither the vital interests nor the independence or honor of the two contracting states, nor the interests of any state other than the two contracting states, are involved.

## ARTICLE II.

In each particular case the high contracting parties, before addressing themselves to the permanent Court of Arbitration, shall sign a special undertaking determining clearly the subject of dispute, the extent of the arbitral powers and the details to be observed in the constitution of the arbitral tribunal and the procedure.

## ARTICLE III.

The present arrangement is concluded for a duration of five years from the date of signature.

CAMBON,  
LANSDOWNE.

London, October 14, 1903.

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SCHEDULE 2.

RESOLUTIONS ADOPTED BY THE ARBITRATION CONFERENCE  
AT WASHINGTON, JANUARY 12, 1904.

WHEREAS, By a concurrent resolution of the Congress of the United States, adopted in 1890, the President was requested to invite negotiations with other governments to the end that any differences which could not be adjusted by diplomacy might be referred to arbitration and peaceably adjusted by such means, and the British House of Commons in 1893 adopted a resolution expressing cordial sympathy with this purpose, as well as the hope that the British government would lend its ready co-operation to the government of the United States to the end that the resolution of Congress might be made effective; and

WHEREAS, Since that time, as the result of an international conference, a permanent court of arbitration has been established at The Hague, to which nations may voluntarily resort for the peaceful settlement of their differences; and

WHEREAS, It is the opinion of this Conference that the government of the United States, in view of its historical position and of the great results accomplished by means of arbitration, should continue to further and to support every movement to establish by peaceful means the reign of law and justice among nations:

*Resolved*, That it is recommended to our government to endeavor to enter into a treaty with Great Britain to submit to arbitration by the permanent court at The Hague, or, in

default of such submission, by some tribunal specially constituted for the case, all differences which they may fail to adjust by diplomatic negotiation ;

*Resolved*, That the two governments should agree not to resort in any case to hostile measures of any description till an effort has been made to settle any matter in dispute by submitting the same either to the permanent court at The Hague or to a commission composed of an equal number of persons from each country, of recognized competence in questions of international law.

*It is further Resolved*, That our government should enter into treaties to the same effect, as soon as practicable, with other powers.

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### SCHEDULE 3.

[*Neutrality—Russia and Japan.*]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

#### A PROCLAMATION.

WHEREAS, A state of war unhappily exists between Japan, on the one side, and Russia, on the other side ;

AND WHEREAS, The United States are on terms of friendship and amity with both the contending powers, and with the persons inhabiting their several dominions ;

AND WHEREAS, There are citizens of the United States residing within the territories or dominions of each of the said belligerents and carrying on commerce, trade or other business or pursuits therein, protected by the faith of treaties ;

AND WHEREAS, There are subjects of each of the said belligerents residing within the territory or jurisdiction of the United States, and carrying on commerce, trade, or other business or pursuits therein ;

AND WHEREAS, The laws of the United States, without interfering with the free expression of opinion and sympathy,



or with the open manufacture or sale of arms or munitions of war, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest;

AND WHEREAS, It is the duty of a neutral government not to permit or suffer the making of its waters subservient to the purposes of war;

NOW, THEREFORE, I, Theodore Roosevelt, President of the United States of America, in order to preserve the neutrality of the United States and of their citizens and of persons within their territory and jurisdiction, and to enforce their laws, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf, and of the law of nations, may thus be prevented from an unintentional violation of the same, do hereby declare and proclaim that by the act passed on the twentieth day of April, A. D. 1818, commonly known as the "neutrality law," the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit:

1. Accepting and exercising a commission to serve either of the said belligerents by land or by sea against the other belligerent.

2. Enlisting or entering into the service of either of the said belligerents as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque or privateer.

3. Hiring or retaining another person to enlist or enter himself in the service of either of the said belligerents as a soldier, or as a marine or seaman on board of any vessel of war, letter of marque or privateer.

4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

5. Hiring another person to go beyond the limits of the United States with intent to be entered into service as aforesaid.

6. Retaining another person to go beyond the limits of the United States with intent to be enlisted as aforesaid.

7. Retaining another person to go beyond the limits of the United States with intent to be entered into service as aforesaid. (But the said act is not to be construed to extend to a citizen or subject of either belligerent who, being transiently within the United States, shall, on board of any vessel of war, which, at the time of its arrival within the United States, was fitted and equipped as such vessel of war, enlist or enter himself or hire or retain another subject or citizen of the same belligerent, who is transiently within the United States, to enlist or enter himself to serve such belligerent on board such vessel of war, if the United States shall then be at peace with such belligerent.)

8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of either of the said belligerents.

9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser or other armed vessel, which at the time of her arrival within the United States was a ship of war, cruiser or armed vessel in the service of either of the said belligerents, or belonging to the subjects of either, by adding to the number of guns of such vessels, or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war.

11. Beginning or setting on foot or providing or preparing the means for any military expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territories or dominions of either of the said belligerents.

And I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the armed vessels of either belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations, or as posts of observations upon the ships of war or privateers or merchant vessels of the

other belligerent lying within or being about to enter the jurisdiction of the United States, must be regarded as unfriendly and offensive, and in violation of that neutrality which it is the determination of this government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the fifteenth day of February instant, and during the continuance of the present hostilities between Japan and Russia, no ship of war or privateer of either belligerent shall be permitted to make use of any port, harbor, roadstead or waters subject to the jurisdiction of the United States from which a vessel of the other belligerent (whether the same shall be a ship of war, a privateer or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States. If any ship of war or privateer of either belligerent shall, after the time this notification takes effect, enter any port, harbor, roadstead or waters of the United States, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, harbor, roadstead or waters, except in case of stress of weather or of her requiring provisions or things necessary for the subsistence of her crew, or for repairs; in either of which cases the authorities of the port or of the nearest port (as the case may be) shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been permitted to remain within the waters of the United States for the purpose of repair shall continue within such port, harbor, roadstead or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed, unless within such twenty-four hours a vessel, whether ship of war, privateer or merchant ship of the other belligerent, shall have departed therefrom, in which case the time limited for the departure of such ship

of war or privateer shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any ship of war, privateer or merchant ship of the other belligerent which may have previously quit the same port, harbor, roadstead or waters. No ship of war or privateer of either belligerent shall be detained in any port, harbor, roadstead or waters of the United States more than twenty-four hours, by reason of the successive departures from such port, harbor, roadstead or waters of more than one vessel of the other belligerent. But if there be several vessels of each or either of the two belligerents in the same port, harbor, roadstead or waters, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the respective belligerents, and to cause the least detention consistent with the objects of this proclamation. No ship of war or privateer of either belligerent shall be permitted, while in any port, harbor, roadstead or waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without any sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive if dependent upon steam alone, and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, harbor, roadstead or waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war or privateer shall, since last thus supplied, have entered a port of the government to which she belongs.

And I further declare and proclaim that by the first article of the convention as to rights of neutrals at sea, which was

concluded between the United States of America and His Majesty the Emperor of all the Russias on the twenty-second day of July, A. D. 1854, the following principles were recognized as permanent and immutable, to wit:

“1. That free ships make free goods, that is to say, that the effects or goods belonging to subjects or citizens of a power or state at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war.

“2. That the property of neutrals on board an enemy's vessel is not subject to confiscation unless the same be contraband of war.”

And I do further declare and proclaim that the statutes of the United States and the law of nations alike require that no person, within the territory and jurisdiction of the United States, shall take part, directly or indirectly, in the said war, but shall remain at peace with each of the said belligerents, and shall maintain a strict and impartial neutrality, and that whatever privileges shall be accorded to one belligerent within the ports of the United States shall be, in like manner, accorded to the other.

And I do hereby enjoin all the good citizens of the United States, and all persons residing or being within the territory or jurisdiction of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes, or in violation of the law of nations in that behalf.

And I do hereby warn all citizens of the United States, and all persons residing or being within their territory or jurisdiction that, while the free and full expression of sympathies in public and private is not restricted by the laws of the United States, military forces in aid of either belligerent cannot lawfully be originated or organized within their jurisdiction; and that while all persons may lawfully, and without restriction by reason of the aforesaid state of war, manufacture and sell within the United States arms and munitions of war, and other articles ordinarily known as “contraband of war,” yet they

cannot carry such articles upon the high seas for the use or service of either belligerent, nor can they transport soldiers and officers of either, or attempt to break any blockade which may be lawfully established and maintained during the war, without incurring the risk of hostile capture, and the penalties denounced by the law of nations in that behalf.

And I do hereby give notice that all citizens of the United States and others who may claim the protection of this government, who may misconduct themselves in the premises, will do so at their peril, and that they can in no wise obtain any protection from the government of the United States against the consequences of their misconduct.

*In Witness Whereof*, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this eleventh day of February, in the year of our Lord one thousand  
 [SEAL.] nine hundred and four, and of the independence of the United States the one hundred and twenty-eighth.

THEODORE ROOSEVELT.

By the President:

JOHN HAY,

*Secretary of State.*

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#### SCHEDULE 4.

#### CIRCULAR—DEPARTMENT OF STATE.

DEPARTMENT OF STATE,

WASHINGTON, D. C., June 10, 1904.

*To the Ambassadors of the United States in Europe:*

GENTLEMEN:—It appears from public documents that coal, naphtha, alcohol and other fuel have been declared contraband of war by the Russian government. These articles enter into general consumption in the arts of peace, to which they are vitally necessary. They are usually treated not as “absolutely

contraband of war," like articles that are intended primarily for military purposes in time of war, such as ordnance, arms, ammunition, etc., but rather as "conditional contraband," that is to say, articles that may be used for or converted to the purposes of war or peace, according to circumstances. They may be rather classed with provisions and foodstuffs of ordinary innocent use, but which may become absolutely contraband of war when actually and especially destined for the military or naval forces of the enemy.

In the war between the United States and Spain the Navy Department General Orders No. 492, issued June 20, 1898, declared, in Article 19, as follows: "The term contraband of war comprehends only articles having a belligerent destination." Among articles absolutely contraband it declared ordnance, machine guns and other articles of military or naval warfare. It declared as conditional contraband "coal, when destined for a naval station, a port of call or a ship or ships of the enemy." It likewise declared provisions to be conditionally contraband "when destined for the enemy's ship or ships, or for a place that is besieged."

The above rules as to articles absolutely or conditionally contraband of war were adopted in the naval war code, promulgated by the Navy Department, June 27, 1900.

While it appears from the documents mentioned that rice, foodstuffs, horses, beasts of burden and other animals which may be used in time of war are declared to be contraband of war only when they are transported for account of or in destination to the enemy. yet all kinds of fuel, such as coal, naphtha, alcohol, are classified along with arms, ammunition and other articles intended for warfare on land or sea.

The test in determining whether articles *ancipitis usus* are contraband of war is their destination for the military uses of a belligerent. Mr. Dana, in his notes to Wheaton's "International Law," says:

"The chief circumstance of inquiry would naturally be the port of destination. If that is a naval arsenal, or a port in

which vessels of war are usually fitted out, or in which a fleet is lying, or a garrison town, or a place from which a military expedition is fitted out, the presumption of military use would be raised, more or less strongly, according to circumstances."

In the wars of 1839 and 1870 coal was declared by France not to be contraband. During the latter war Great Britain held that the character of coal depended upon its destination, and refused to permit vessels to sail with it to the French fleet in the North Sea. Where coal or other fuel is shipped to a port of a belligerent, with no presumption against its pacific use, to condemn it as absolutely contraband would seem to be an extreme measure.

Mr. Hall, "International Law," says:

"During the West Africa conference in 1884 Russia took occasion to dissent vigorously from the inclusion of coal among articles contraband of war, and declared that she would categorically refuse her consent to any articles in any treaty, convention or instrument whatever which would imply its recognition as such."

We are also informed that it is intended to treat raw cotton as contraband of war. While it is true that raw cotton could be made up into clothing for the military uses of a belligerent, a military use for the supply of an army or garrison might possibly be made of foodstuffs of every description which might be shipped from neutral ports to the non-blockaded ports of a belligerent. The principle under consideration might, therefore, be extended so as to apply to every article of human use, which might be declared contraband of war simply because it might ultimately become in any degree useful to the belligerent for military purposes.

Coal and other fuel and cotton are employed for a great many innocent purposes. Many nations are dependent on them for the conduct of inoffensive industries, and no sufficient presumption of an intended warlike use seems to be afforded by the mere fact of their destination to a belligerent port. The recognition in principle of the treatment of coal and other



fuel and raw cotton as absolutely contraband of war might ultimately lead to a total inhibition of the sale by neutrals to the people of belligerent states of all articles which could be finally converted to military uses. Such an extension of the principle by treating coal and all other fuel and raw cotton as absolute contraband of war simply because they are shipped by a neutral to a non-blockaded port of a belligerent would not appear to be in accord with the reasonable and lawful rights of a neutral commerce.

I am, gentlemen, your obedient servant,

JOHN HAY.

## SCHEDULE 5.

### JAPANESE PRIZE COURTS.

*Tribunals Organized at the Beginning of the War. Various Cases Adjudicated. Some Refined Applications of International Law.*

From the *London Times*.

TOKIO, June 14.

In the case of two steamers, the "Mukden" and the "Argun," both belonging to the Chinese Eastern Railway Company, the courts had indirectly to apply the principle which forbids a belligerent to confiscate personal property of an enemy existing within his jurisdiction, and directly the principle that the private property of neutrals should be immune even when found in an enemy's ships. The "Mukden" was captured at a distance of some miles from Fusan, in Korea, on February 6th. Among her cargo were found goods—beds and bedding—consigned by a British firm in Nagasaki to the agent of the Chinese Eastern Railway in Gen-san, Korea, a Russian subject, and also goods sent by a Shanghai drug-gist to the Acting Commissioner of Customs at Song-jin,

Korea. The "Argun," captured on February 7th on the southwest of Korea, had among her cargo forty packages consigned by the agents of the Chinese Eastern Railway Company in Dalny to the agents of the same company in Nagasaki. All these articles were released and handed to their consignees.

*Fate of a Norwegian Vessel.*

The case of the steamship "Hermes" illustrated a more refined application of international law. A Norwegian vessel, owned by a Norwegian subject, and flying the Norwegian flag, she was chartered by the Japanese agents of a well-known Russian firm, having close relations with the Russian government, to carry coal from Moji to Port Arthur. At 10 A. M. on February 6th she left the former place with a cargo of 2100 tons of the mineral, together with various other goods, and at 2 P. M. on the 9th of that month she was captured by a Japanese man-of-war off Port Arthur. There could be no question that she was engaged in the business of conveying contraband of war to the stronghold of the enemy, and therefore the legality of her seizure was indisputable. But on behalf of her owners counsel appeared before the prize court and argued that at the time of the steamer's departure from Moji neither the Japanese agents nor her Norwegian master was aware of the outbreak of hostilities, and that the knowledge had been acquired for the first time by the capture of the vessel. The court admitted the justice of this plea. After due examination the judges convinced themselves that in truth no knowledge had been possessed, and in declared obedience to the doctrine that "the duties of a neutral do not acquire binding force until he is aware of the existence of a state of war," they released the steamer and all her cargo.

Considerable interest attached also to the steamship "Manchuria," the property of the Chinese Eastern Railway Company. At the outbreak of hostilities she had just emerged from the Nagasaki dock and was lying in harbor there, her preparations for putting to sea not being complete. On Feb-

ruary 17th, that is to say the day after the expiration of the period of indulgence, she was seized by the man-of-war "Katsurage." Her owners, through their Japanese counsel, formulated two protests against confiscation—first, that at the time of seizure the steamer was in the actual possession of a Japanese subject, not having yet been taken over from the dock company; and, secondly, that the limit of time fixed by the proclamation of indulgence applied only to vessels fit for navigating the high seas, and could not be properly considered operative in the case of a ship undergoing repairs. But the court overruled both of these objections. It held that the nationality of a ship and her liability to confiscation are not affected by the accident of her immediate possession, and as to the question of the proclamation of indulgence the judgment was that, since the proclamation constituted an exception to the general law of liability to seizure, the former's terms must be rigidly construed, and nothing that was not explicitly mentioned might be read into them. The public acquiesced in the justice of this ruling, though some sympathy had been felt originally with the steamer's owners. It is interesting to note that she has just sailed from Yokosuka, carrying a number of foreign naval attachés, members of the Diet and newspaper correspondents, who, as guests of the Japanese government, are to make the tour of such parts of the battlefield as are easily accessible from the seacoast.

The case of the steamship "Russia" disclosed an undoubted hardship. At the request of the ship's agents at Vladivostok, a British firm in Kobe had advanced money to provide essentials for her use and to pay part of her current expenses. The total due to the firm was some £1500, and their legal representative urged that this debt should either be recognized as a prior claim against the vessel or taken over as a liability by the state treasury. He impaired his case by attempting to prove that the seizure of the ship at 7 A. M. on February 7th had preceded the rupture of diplomatic relations, since no hour on the 6th having been officially indicated for the rupture, it

must be supposed to have taken place at midnight, which would correspond to 8 A. M. by English or Korean time, and the ship had been captured in Korean waters. The court, it need scarcely be said, treated this argument with scant ceremony. But the judges' view as to the monetary issue was different. They virtually admitted the justice of the creditor's position, but avowed their inability to recognize it practically—first, because the codes of Japan contain no provision with regard to prior claims against state prizes; and, secondly, because, according to international law, a captor's title to property captured from an enemy is absolute, and admits of no dispute by third parties. At the same time the court significantly added that it was not competent to decide as to the liability of the imperial treasury.

One other case deserves notice. It is that of the Chinese Eastern Railway Company's steamship "Argun," whose cargo has already been alluded to. She left Dalny, carrying mails, cargo and passengers, on February 6th, and when en route for Nagasaki was captured at a point southwest of Korea, on the 7th, at 4.30 P. M. The company, through their counsel, protested against this seizure. Five points were raised—first, that since a state of war should be held to date from the commencement of actual hostilities, the capture of the vessel had preceded a state of war; secondly, that the steamer, being a merchant ship, was entitled to the indulgence provided by the imperial proclamation; thirdly, that since she carried mails her immunity against capture would be in accord with the views of international jurists; fourthly, that her seizure having taken place in Korean waters, it became necessary to consider whether or not Korea was neutral; and fifthly, that since the public at large could not know of the existence of a state of war until informed by the issue of a proclamation, a state of war had not commenced for practical purposes when the vessel was seized. The court's manner of dealing with these arguments may be quoted in full:

“It is an indisputable fact that Russia needlessly prolonged the negotiations with this country; that she sent troops to Manchuria and Korea; that she assembled ships of war in Port Arthur; that she unceasingly showed warlike activities, and that she exhibited a determination to fight with this empire. Therefore we gave notice of the rupture of diplomatic relations, and, having simultaneously completed preparations for war, our naval squadrons left Saseho for the purpose of striking at the enemy's fleet. Hence, at the time when the “Argun” was captured a state of war already existed. As to the indulgence proclamation, it was issued on February 9th, and it cannot be retrospectively applicable, especially in the case of a vessel owned by the Chinese Eastern Railway Company, which is bound by its charter to place its services at the disposal of the government and the military in time of war. To release such a vessel would manifestly be to augment the enemy's fighting power, and it is not conceivable that the indulgence proclamation can have been intended to serve that purpose. Further, the usage of nations universally indicates that in the absence of special convention or treaty a mail steamer of the enemy is liable to capture just as is any other of his vessels, and though some jurists may advocate a different practice, their wish has not yet assumed the force of law. Finally, it is quite obvious that in this crisis Korea cannot be called a neutral state, nor can her territorial waters confer any immunity from capture. The “Argun,” therefore, was lawfully seized, and is now declared a legitimate prize of war, together with everything on board.”

*Proceedings in Japanese.*

The proceedings of the prize courts, having been conducted in the Japanese language, remained a sealed book to the great majority of foreigners. Advertisements in English were published for thirty days, setting forth in full the name of each ship, the time and place of her capture, as well as the articles found on board, and inviting protests against confiscation.

**REPORT**  
**OF THE**  
**COMMITTEE ON GRIEVANCES.**

*To the American Bar Association :*

The Committee on Grievances respectfully report :

That certain documents concerning proceedings in the District Court of the United States for the District of Hawaii, whereby a member of its Bar, Mr. George A. Davis, was disbarred by that court in a judgment imposing a sentence so short and of such a nature as that, if appeal were taken therefrom, execution would not be stayed, and the court's sentence would be suffered before the appeal could be heard, have been sent to this Committee in order, apparently, that some opinion should be pronounced alleviating the alleged injustice which the sufferer or his friends think has been done to Mr. Davis.

These documents consist, mainly, of the brief of Mr. Davis, the information against him, his answer thereto and some evidence taken on his part. The case seems to be one of an extraordinary nature, both on the part of Mr. Davis and the judge of the court who took the leading part in it, and, as illustrative of legal practice in the courts of Hawaii, is not without interest.

But the "grievance" is direct and exclusive to Mr. Davis, and your Committee fail to see that the Association has any power to remedy the wrong done or to restrain the commission of a like offense, if there be an offense, by that Hawaii court or any other court hereafter or to criticise the judgment of the court. Indeed, this may almost make the Association guilty of contempt of court itself.

The occasion naturally suggests questions as to what grievances your Committee should consider and the Association should act upon. It is hard to answer this question. The framers of our Constitution could hardly have thought that

the Association could recommend any remedy for personal grievances. Nor could they have thought it advisable to lay down rules by obedience to which such grievances should be prevented. It may happen that laws will be passed by legislatures or rules or by-laws will be made by courts or municipalities which prove, or seem to prove, that instead of being acts aiding justice and right, they are detrimental thereto. In such cases the opinion of this body after due consideration ought to be worth something; in some cases, perhaps, a great deal. An illustration of this may possibly come before the Association at this meeting. The fact that couples joined in matrimony in one state can be divorced, there or elsewhere, for different causes may properly be called a public grievance, and the opinion of this Association may not improperly be invoked, and may be, perhaps, potential.

Still it cannot be doubted, your Committee think, that private grievances are not to engross the time or attention of this Association. Courts must settle them. If laws produce public wrongs, the Association has the right to pronounce an opinion and recommend action suggesting remedy or prevention. This right belongs to every individual member, and therefore to the body which they form and maintain. Further than this your Committee think it has no power to go, nor has it time to do it if it had the power.

All which is respectfully submitted.

For the Committee,

CORTLANDT PARKER,  
*Chairman.*

**REPORT**  
**OF THE**  
**COMMITTEE ON OBITUARIES.**

The Committee on Obituaries report the names of members who have died since the last meeting, as follows, viz.:

**CONNECTICUT.**

BREWSTER, LYMAN D., . . . . . Danbury.  
KELLOGG, STEPHEN W., . . . . . Waterbury.

**ILLINOIS.**

\*BONNEY, CHARLES C., . . . . . Chicago.  
JEWETT, JOHN M., . . . . . Chicago

**IOWA.**

MCCARTHY, J. J., . . . . . Dubuque.

**MARYLAND.**

COWEN, JOHN K., . . . . . Baltimore.  
WIRT, JOHN S., . . . . . Elkton.

**MASSACHUSETTS.**

CORCORAN, JOHN W., . . . . . Boston.

**MICHIGAN.**

MEDDAUGH, ELIJAH W., . . . . . Detroit.

**MINNESOTA.**

SANBORN, JOHN B., . . . . . St. Paul.  
STEVENS, HIRAM F., . . . . . St. Paul.

**NEBRASKA.**

OGDEN, CHARLES, . . . . . Omaha.

**NEW YORK.**

CARTER, WALTER S., . . . . . New York.  
FORBES, FRANCIS, . . . . . New York.  
PARMENTER, ROSWELL A., . . . . . Troy.  
THOMPSON, SEYMOUR D., . . . . . New York.



**NORTH CAROLINA.**

HILL, THOMAS N., . . . . . Halifax.

**PENNSYLVANIA.**

DALE, RICHARD C., . . . . . Philadelphia.

WALKER, ROBERT J. C., . . . . . Philadelphia.

**TEXAS.**

WEST, ROBERT G., . . . . . Austin.

**WISCONSIN.**

STEVENS, BREEZE J., . . . . . Madison.

Respectfully submitted,

JOHN HINKLEY,  
SELDEN P. SPENCER.

NOTE.—This report includes those members of whose death the Committee have been informed up to September 27, 1904. Obituary notices (including those of some members not in the above report) will be found near the end of this volume.

\* Obituary notice published in the 1903 report.

**REPORT**  
**OF THE**  
**COMMITTEE ON LAW REPORTING AND DIGESTING.**

The recommendations made by your Committee at the meeting of last year were not adopted, and after discussion were recommitted.

The Committee had been requested "to inquire and report whether it might not be advisable for the Association to express an opinion as to the desirability of withholding from publication opinions which have no importance in explaining or developing the law; this to be accomplished by orders of the court and by the action of unofficial publishing houses."

The Committee of last year referred in their report to the fact that in this country counsel in every state, in order to keep up with the development of the law, are compelled to consult the reports of many states, and that the number and bulk of the reports was increasing so rapidly that the labor and expense involved would soon become intolerable.

The Committee was agreed that in view of this condition the length of the opinions and the number of the reported cases ought to be kept as small as possible; that it is desirable that the judges be careful to confine their opinions to the decision of the points in issue and a concise statement of the reasons on which their conclusions are based with such discussion of authorities as may be necessary, and that they avoid general dissertations on the topics suggested by the case. The majority of the Committee were of the opinion that it is desirable that the opinions filed should not all be published. The minority insisted that it is neither practicable nor proper to withhold from publication any opinions that are delivered. The resolutions offered were that in the opinion of the Association it is important that the rapid increase in the

number of volumes of the reports be checked; that it is not desirable that opinions should be published which discuss merely questions of fact or which reaffirm without modification obviously well settled principles of law, and by way of remedy that the judges should consider and decide which of their opinions should not be published, having in view the true purpose of reporting and the rapid increase of our reports, and that the reporters should respect this decision and use further discretion of their own in omitting cases of no value in the illustration or development of legal principles.

The present Committee are agreed that it is important that the rapid increase of the volume of the reports should be checked, and that it is desirable that opinions which merely discuss questions of fact or reaffirm without modification obviously well settled points of law should not be reported, but they do not agree that it is best to recommend that the judges themselves should decide which of their opinions should not be reported.

The decisions of the courts make the law. They are precedents whether they are reported or not. They are known to the judges and the judges act upon them, and the profession are entitled to have access to them, and there are good reasons why the judges should not have the responsibility of deciding which of them should not be made known to the profession through the reports.

On the other hand there are certainly many cases which it is useless to report, and the reporting of which only serves to add to the bulk of the reports that are already too large.

It may safely be left to the judgment of a competent reporter to omit such cases as these, but the reporter must be competent. He must be a lawyer who is able to judge what cases are certainly not such as should go into the volumes of the reports.

It would be well if there were a council of law reporters in each state; but this may not be practicable, and even if the

official reporters omit useless cases they may still be published by unofficial reporters.

The Committee believe that the best practical remedy for the increasing bulk of the reports lies with the judges in the writing of their opinions, and that it is important that the judges should bear in mind the necessity of keeping down the bulk of the reports and should make their opinions as short as is consistent with a clear statement of the facts and of the reasons and authorities on which their conclusions are reached. Long quotations from authorities that are accessible should be avoided, and the discussion of the evidence should be confined to the points in issue, and no opinion should be written where a mere reference to a previous decision is sufficient to dispose of the case.

With regard to the decisions of the courts of final appeal, the Committee are agreed that substantially all the opinions filed must be published. The lessening of the bulk of these depends for the most part on the judges. In the case of courts of the first instance and intermediate courts the rule should be to publish only such opinions as are of permanent value, and it is with these reports that the most can be accomplished in avoiding undue increase in volume.

The reporters can and should exercise their discretion and should make references and abstracts of cases decided, but report only such as are of some value in the illustration and development of legal principles. In these cases also the co-operation of the judges is necessary in avoiding long opinions, and in these cases the judges may properly indicate, though not decide, that certain opinions are for the information of parties and not useful for publication.

Your Committee appreciates fully the danger of the too rapid increase of the reports, and they reaffirm the resolution of last year's committee, except that they do not agree that the judges should decide what opinions should not be published, and they think that the discretion of reporters in omitting

opinions should be exercised only with regard to the decisions of courts that are not courts of last resort.

The resolution they suggest is that it is important that the rapid increase of the number and volumes of reported cases should be checked and that the remedy is for the judges to take pains to make their opinions as concise as is consistent with a clear statement of the facts and the reasons for their conclusions, and for the reporters to cut down the number and volume of the reports of courts that are not courts of the last resort.

EDWARD Q. KEASBEY,  
ALEXANDER NEW,  
JOHN MORRIS, JR.,  
R. W. BRECKENRIDGE.

**REPORT**  
**OF THE**  
**COMMITTEE ON INDIAN LEGISLATION.**

*To the American Bar Association :*

Your Committee on Indian Legislation would respectfully report that they believe that in the majority of the Indian reservations the prompt carrying out of the provisions of the "Severalty Act," approved February 8, 1887, is apparently the best practical solution of the Indian problem. Our policy toward the Indian is neither wise nor humane. We require of him no labor. We feed him and allow him to spend his time in listless idleness. This naturally leads to vice, degeneracy and extinction. Yet he can work. In Mexico and Central and South America most of the labor is performed by Indians. And we believe that the only salvation for our fast disappearing aborigines, if there be any salvation for them, lies in work.

But the Indian will not work as long as his tribal organization is maintained; nor does labor offer any sufficient reward while property is held in common. We think that wherever it is practicable the Severalty Act should be put in operation. The arable lands of the Indians should be divided, and enough to make a small farm given to each. Alienation should be forbidden for a certain time, and assistance supplied for a few years. Then the Indian should be merged in the body of the people, compelled to labor for what he gets and held answerable to the same laws. Some of them would no doubt prove incorrigible and pass out, but others would make useful citizens. At present they are for the most part useless, and extinction is staring them in the face. In most reservations there would be vast tracts of arable land in excess of the Indians' demands. These should be sold to white settlers whose industry and

thrift would be an example and an encouragement to the natives.

We think that in the greater portion of the country the time and circumstances are ripe for the application of the Severalty Act; and the Executive, to whose discretion its enforcement is left, should be urged to put it into general operation.

In the arid lands of the Southwest a different problem confronts us. There the lands of the Indians are unfit for agriculture without irrigation works that involve an expenditure and an intelligence far beyond native attainment. They are often too barren even for successful grazing. Under these conditions the natives must remain for the present the wards of the nation. The territorial courts find the administration of justice, either for their protection or their punishment, an unprofitable expense, and their affairs get scant judicial attention. We think that throughout this arid region the federal courts should be given jurisdiction of all litigation, civil and criminal, to which an Indian is a party.

Respectfully,

G. B. ROSE,  
E. E. ELLINWOOD,  
C. N. POTTER.

**REPORT**  
**OF THE**  
**COMMITTEE ON UNIFORM STATE LAWS.**

During the last year the states of Kentucky and Louisiana have adopted the negotiable instruments law, so that now twenty-three states, one territory and the District of Columbia have adopted this law. Only a few legislatures have met during the last year, most of them holding their biennial sessions the coming winter. We have reason to expect that several will pass the act during the forthcoming year. We may therefore look forward confidently to the time as not far distant when this law will become part of the law of the land generally, and thus the English-speaking nations and their dependencies the world over will be brought into harmony on this important branch of commercial law.

The conference of Commissioners on Uniformity of Legislation was held in St. Louis, September 22, 23 and 24, 1904. The uniform sales of goods act, drafted for these commissioners by Prof. Samuel Williston, of the Harvard Law School, and submitted in the last annual report of your Committee, was taken up for consideration with the draftsman and was minutely examined, section by section. Printed copies in its present form will be distributed throughout the United States among members of the various benches, bars, law schools, writers on sales and others. Suggestions are earnestly requested as to desirable amendments or changes, in order that the act may be in the most perfect form possible for adoption at the annual conference in 1905.

The American Warehousemen's Association has promised to contribute toward the expense of drafting a uniform act relating to warehousemen and warehousemen's receipts. We hail with satisfaction this acknowledgment from such a powerful com-



mercial body of the value of the work possible of accomplishment through the Commissioners on Uniformity of Legislation.

At the meeting in 1902 of the American Bar Association, your Committee was authorized and requested to consider and to report upon the subject of uniform legislation and interstate comity respecting taxation, especially with reference to matters of *situs*, jurisdiction and double taxation; and also whether it is expedient to promote uniform legislation on the subject of forced heirship, disinheritance (that is, limitation on testamentary disposition) and the allowance of "captation" or "undue influence" as a ground of annulment of wills and testaments. These resolutions were referred to this Committee upon motion of Ex-President Howe, who has written to the Chairman that he cannot attend this annual meeting, and he asks that he be allowed to withdraw them and that this Committee be discharged from further consideration thereof. We ask therefore that this action be taken.

We recommend that the proceedings of the conference of Commissioners on Uniformity of Legislation be published each year in the report of the American Bar Association. The very valuable and efficient work done by this conference is strictly in accordance with one of the principal objects enumerated in Article I of the Constitution of the American Bar Association, "to promote the administration of justice and uniformity of legislation throughout the union," and the appointment of these Commissioners on Uniformity of Legislation was the result of action taken by the American Bar Association.

Respectfully submitted for the Committee.

AMASA M. EATON,  
*Chairman.*

REPORT  
OF THE  
COMMITTEE ON PENAL LAWS AND PRISON DISCIPLINE.

*To the American Bar Association :*

Your Committee on Penal Laws and Prison Discipline submits the following report on the resolution submitted to the Committee two years ago.

There was referred to this Committee the following resolution :

*Resolved*, That we are in favor of establishing in the Department of Justice at Washington a laboratory for the study of the criminal, pauper and defective classes, it being understood that such investigation is a development of work already begun under the federal government; that such study shall include a collection of jurisprudential, sociological and pathological data in institutions for the delinquent, dependent and defective, and in hospitals, schools and other institutions; that especially the *causes* of social evils shall be sought out with a view to ameliorating or preventing them.

The Committee has to a certain extent investigated that subject, and we have united upon this report. The matter and objects are set forth in the resolution on pages 29 and 30 of the report of 1902. Your Committee desires to test the value of the same, as proposed by the friends of such investigations, and to hold such parties responsible for the beneficial results, and your Committee recommends the passage of the resolution.

This report was presented at the 1903 meeting, but its recommendations could not be acted upon at that meeting because it had not previously been printed and mailed to the

members fifteen days before the meeting (see the report of 1903, pages 94 to 117).

Respectfully submitted,

JOHN H. STINESS,  
R. W. WILLIAMS,  
JOHN D. LAWSON,  
MARTIN DEWEY FOLLETT,  
RODNEY A. MERCUR.

**REPORT**  
**OF**  
**COMMITTEE ON LOUISIANA PURCHASE EXPOSITION.**

*To the American Bar Association :*

Your Committee on the Louisiana Purchase Exposition respectfully reports that since the last meeting of this Association it has been active with the local committees appointed by the Louisiana Purchase Exposition Company and the Bar Associations of St. Louis and of Missouri, in working out the details for the Universal Congress of Lawyers and Jurists to be held September 28th to 30th, inclusive, in Festival Hall, on the exposition grounds at St. Louis.

All that has been done in relation to the matter has been done in co-operation with the committee appointed by the Louisiana Purchase Exposition Company and the committee appointed by the Bar Association of St. Louis.

It was found necessary to organize one executive committee out of these various committees, which has been designated the Committee on Plan and Scope, and this committee has completed all the arrangements for the Congress, and has secured the primary speakers who are to read the principal papers to be presented to the Congress, and the secondary speakers who, in the first instance, are to discuss the several papers so read.

The Committee on Plan and Scope, so selected, consists of the following gentlemen :

Fred. W. Lehmann, of the St. Louis Bar, Chairman of the Committee on Congresses of the Louisiana Purchase Exposition Company ;

Hon. Amos M. Thayer, Judge of the United States Circuit Court of Appeals, Eighth Circuit ;

James Hagerman, President of the American Bar Association ;

Jacob Klein, Chairman of the Committee of the American Bar Association on the Louisiana Purchase Exposition and President of the Bar Association of St. Louis;

Edward S. Robert, of the St. Louis Bar; and

Charles Claflin Allen, of the St. Louis Bar.

Mr. V. Mott Porter, the Secretary of the Bar Association of St. Louis, was appointed as the Secretary of the committees having charge of all matters relating to the congress.

The Committee on Plan and Scope, so constituted, obtained the consent of Hon. David J. Brewer, Associate Justice of the Supreme Court of the United States; Hon. Amos M. Thayer, Judge of the United States Circuit Court of Appeals, Eighth Circuit, and of Hon. Simeon E. Baldwin, Judge of the Supreme Court of Errors of Connecticut, to act as a committee to formulate the rules for the organization and procedure of the Congress and a programme of the papers and discussions.

This work, having been completed, was reported to the Committee on Plan and Scope, and a printed copy thereof sent to all the members of the Committee of this Association on the Louisiana Purchase Exposition for their comments and approval.

The members of our Committee having substantially approved the proposed rules, regulations and programme, the entire matter was then submitted to the executive committee of this Association and to the executive committee previously appointed out of the Committee of this Association on the Louisiana Purchase Exposition.

The executive committee of the Association and of this committee held a joint meeting at the Southern Hotel, in the city of St. Louis, on May 10, 1904, at which meeting the matter was more carefully considered.

Subsequently, on May 11, 1904, there was a joint session held at the chambers of Judge Thayer, in St. Louis, of the two bodies representing this Association and the Committee on Plan and Scope above mentioned, and the rules, regulations

and programme were then finally approved and the Committee on Plan and Scope given full authority to complete all arrangements and do whatever might be necessary for the holding of the Congress.

Since that time your Committee has been active in completing the arrangements and details for the holding of the Congress, which is to be held by special permission of the exposition company, in Festival Hall, on the exposition grounds.

It has been arranged that all the delegates to the Congress shall receive cards of admission to the exposition grounds for the entire week, beginning September 26th; that each delegate shall receive a medal indicating his membership and arrangements have been made by the local committees for the entertainment of the primary speakers and foreign delegates during the week.

A local committee of the St. Louis Bar and of the St. Louis Bar Association has raised a fund to defray the expenses for the entertainment of the Congress and of the members of the American Bar Association, amounting in the aggregate to \$5000.

The Bar Association of St. Louis has contributed for the same purpose the sum of \$1000.

A banquet is to be tendered to the members of the American Bar Association and the delegates to the Universal Congress of Lawyers and Jurists by the Exposition Company on Wednesday evening, September 28, 1904, at the Tyrolean Alps in the exposition grounds.

Appended to this report is a printed copy of the rules for the organization and procedure of the Congress and of the programme, and a list of all the accredited delegates to the Congress.

It is believed by your Committee that much good will result from the meeting of this Congress, and that the participation of this Association therein, and in promoting the same, has

assured the success of the Congress which is to begin immediately upon the close of the meeting of this Association.

Your Committee desires to acknowledge the efficient services rendered by the Committee on Programme and by the Committee on Plan and Scope above mentioned, and especially the very efficient services rendered by Mr. V. Mott Porter, the secretary.

Your Executive Committee, at the solicitation of this Committee, made an appropriation of \$2500 toward defraying the expenses of the Congress.

It is understood that the proceedings of the Congress will be printed for distribution among the members of this Association, the delegates to the Congress and the various governments participating therein, as well as the Bar Associations and universities represented in the Congress.

We recommend that a vote of thanks to the Exposition Company be adopted by this Association for its efficient participation in perfecting the arrangements for the Congress, as well as for the generous entertainment provided by it for this Association and the Congress.

Respectfully submitted,

JACOB KLEIN,

*Chairman.*

ST. LOUIS, September 27, 1904.

# UNIVERSAL CONGRESS OF LAWYERS AND JURISTS.

## UNIVERSAL EXPOSITION.

SEPTEMBER 28-30, 1904.

### PURPOSE AND PLAN OF THE CONGRESS.

The Universal Congress of Lawyers and Jurists is held under the auspices of the Universal Exposition and the American Bar Association. It was organized by a Joint Committee on Plan and Scope formed from a committee of twenty-five lawyers appointed by the Universal Exposition and a committee of fifty lawyers, one from each state and territory, appointed by the American Bar Association.

The Congress is composed of delegates named by the governments of the world, delegates from Bar Associations and kindred associations of all countries, delegates from law schools and the law faculties of universities, and eminent judges, jurists and lawyers specially appointed as delegates-at-large. The delegates appointed by foreign governments have been named by the respective governments in response to invitations extended through the American State Department.

The American delegates consist of the following classes:

(aa) One hundred and twenty-five lawyers named by the President of the United States, comprising the Chief Justice and Associate Justices of the Supreme Court of the United States; the Presiding Judges of the United States Circuit Courts of Appeals; the Chief Justices of the Court of Appeals and Court of Claims at Washington; the lawyers of the President's cabinet; the living ex-Attorney Generals; the Solicitor General; the living ex-Presidents of the American Bar Association; the Presiding Justices of the courts of our territories and foreign possessions; lawyers from the Senate and the House of Representatives of the United States, taken largely from



the judiciary committees of those bodies, and eminent lawyers in various parts of the country.

(a) Those judges of the Federal Courts and the judges of the Appellate Courts of last resort in the various states who have accepted appointments as delegates *ex-officiis*.

(b) One hundred delegates named by the American Bar Association.

(c) From each State Bar Association delegates equal in number to the representation of the respective states in the House of Representatives of the United States, but each state and territory is entitled to be represented by at least five delegates.

(d) From states not having State Bar Associations delegates appointed by the judges of the highest courts thereof and in the same proportion as stated in the preceding paragraph.

(e) Delegates from the faculties of American law schools attached to state universities and those belonging to the Association of American Law Schools.

(f) Eminent American lawyers and jurists specially appointed at large.

Among the objects of the Congress are the consideration of the history and efficacy of the various systems of jurisprudence and the discussion of those questions of international, municipal and maritime law which concern the welfare of all civilized nations; the hope of contributing to the greater harmony in the principles and the forms of procedure upon which the law of civilized nations should be based; the bringing of lawyers and jurists from all parts of the world in contact for the purpose of exchanging views on the principles and methods of the correct administration of justice, and the establishing of closer relations and associations between members of the profession upon which the administration of justice depends.

#### ORGANIZATION OF THE CONGRESS.

*President of the Universal Exposition, 1904, David R. Francis.*

*President of the American Bar Association, James Hagerman.*

*Chairman Exposition Committee on Congresses, Frederick W. Lehmann.*

*Director of Congresses, Howard J. Rogers.*

#### COMMITTEE ON PLAN AND SCOPE.

Frederick W. Lehmann, *Chairman.* Chairman Exposition Committee on Congresses.

Amos M. Thayer, Judge of the United States Circuit Court of Appeals.

James Hagerman, President of the American Bar Association.

Jacob Klein, Chairman of the American Bar Association Committee on the Universal Congress of Lawyers and Jurists.

Edward S. Robert, member of the Exposition Committee on the Universal Congress of Lawyers and Jurists.

Charles Claflin Allen, member of the Exposition Committee on the Universal Congress of Lawyers and Jurists.

#### OFFICERS OF THE CONGRESS.

*President, David J. Brewer, Associate Justice of the Supreme Court of the United States.*

*Vice-Presidents* [one from each nation to be elected at the first session].

*Secretary, V. Mott Porter, Secretary of the Organization Committees.*

#### RULES OF ORGANIZATION AND PROCEDURE.

##### *I. Membership.*

The Louisiana Purchase Exposition Committee of the American Bar Association will prepare and furnish to the President of the Congress an official roll of all accredited to the Congress.

## *II. Officers.*

In order to facilitate the prompt organization of the Congress, the delegates appointed in behalf of the United States have appointed as its President the Honorable David J. Brewer, Associate Justice of the Supreme Court of the United States, and as its Secretary Mr. V. Mott Porter.

At the opening of the first session the President will call for the nomination of one Vice-President and one member from each of the nations represented to form a Committee of Nations.

## *III. Business.*

All matters calling for a formal vote of the Congress will be proposed by the Committee of Nations, either on their own initiative or by way of report on propositions or motions referred to them. All matters proposed from the floor shall be referred to the Committee without debate. The Committee will choose its chairman, who will make all propositions in its behalf. It may appoint sub-committees consisting of any members of the Congress to aid it in the discharge of its functions.

## *IV. Papers and Discussions.*

At each session of the Congress an address or paper will be presented and followed by a discussion of its subject.

Not over an hour will be occupied in delivering such address or reading such paper, but it will be printed in full subsequently in the proceedings of the Congress.

The author of each paper will furnish to the President of the American Bar Association, at St. Louis, Missouri, as early as he may find it convenient before the opening of the Congress, a brief statement of the positions taken and points made for the information of those who may be appointed to take part in its discussion.

No one will occupy over fifteen minutes in discussion, but anything omitted for lack of time will be printed in full subsequently in the proceedings of the Congress.

Papers and discussions may be presented in any language, but translations into English of all not written in that language will be made before the opening of the Congress for distribution at the time of the presentation of such paper or discussion.

#### *V. Votes.*

At the request of the representatives of any nation, the vote of the Congress on any question will be taken by nations, each nation casting one vote.

No vote can have the effect of binding or prejudicing the action or position of any nation in reference to any subject. While votes may be taken by nations, they will express simply the private opinions of individuals, who have no authority to speak officially in such matters for their respective governments.

#### *VI. Subjects to be Considered.*

The following subjects, among others, will be considered by the Congress, and papers will be presented as a foundation for the discussion of some or all of them:

1. "The promotion of the settlement of international controversies by resort to the Hague Tribunal or reference to special commissions."

2. "The preferable method of regulating the trial of civil actions with respect to pleading and evidence."

3. "A review of the four Hague conferences on private international law, the object of the conferences and probable results."

4. "To what extent should judicial action by courts of a foreign nation be recognized?" (Considered with especial reference to the status of individuals as affected by divorce or other decrees and the right to represent the person or property of another.)

5. "The protection which should be accorded to private property on the high seas in time of war."

*VII. Right to the Floor.*

Any member of the Congress desiring to propose any matter for consideration may do so by presenting a written motion over his signature. This will be presented without explanation and referred without debate to the Committee of Nations.

The President of the Congress, whenever there is occasion and opportunity for *general and extemporaneous discussion* upon any subject, will announce that there is such opportunity; and any member then desiring to speak will send his card stating that fact to the President. No one will be recognized as entitled to the floor who has not thus previously communicated his desire to the President. No one thus speaking will occupy over ten minutes.

*VIII. Publications.*

A copy of the official record of the proceedings in a printed volume will be furnished as soon as practicable after the adjournment of the Congress by the representatives of the United States without charge to each member and to the government of each nation represented.

## PROGRAMME.

*Wednesday, September 28th, 1904, 2 P. M.*

1. The Chairman of the Committee of Congresses of the Universal Exposition will call the Congress to order and introduce the President of the Universal Exposition.

2. The President of the Exposition will introduce the President of Congress.

3. Roll call of delegates to the Congress who have been registered.

4. Organization completed by the nomination and election of Vice-Presidents and members of the Committee of Nations.

5. Paper by the Honorable John W. Foster, LL. D., of Washington, District of Columbia. Subject: "The Promotion of the Settlement of International Controversies by Resort to the Hague Tribunal or Reference to Special Commissions."

6. Discussion of the paper by Sr. Don Emilio Velasco, of Mexico, and Mr. J. H. Ralston, LL. D., of Washington, District of Columbia.

7. General and extemporaneous discussion of the same subject (if the President is of the opinion that time permits).

8. Opportunity for presenting motions.

9. Notice of the first meeting of the Committee of Nations for the purpose of organization.

10. Adjournment by the President until 10 A. M., September 29th.

*Thursday, September 29th, 10 A. M.*

1. Reading of minutes (unless waived).

2. Roll call of delegates who have registered since the former roll call.

3. Paper by Vice-Judge Gustaf Edw. Fahlcrantz, Advocate of Stockholm, Sweden. Subject: "The Preferable Method of Regulating the Trial of Civil Actions with Respect to Pleading and Evidence." (Presenting the civil law method of trial and its merits or demerits as compared with other methods.)

4. Discussion of the paper by Dr. Adolph Hartmann, Judge of the Königliches Land Gericht, Berlin, Germany, and M. Alfred Nerinx, Professor of Law in the University of Louvain, Belgium.

5. General and extemporaneous discussion of the same subject (if the President is of the opinion that time permits).

6. Opportunity for propositions or reports from the Committee of Nations.

7. Opportunity for action on the same and discussion thereof. (Intermission of one hour.)

8. Papers on the subject: "A Review of the Four Hague Conferences on Private International Law, the Object of the Conferences and Probable Results," by Dr. D. Josephus Jitta, Professor in the Municipal University of Amsterdam, Netherlands, and Dr. F. Meili, Professor in the University of Zurich, Switzerland.

9. Discussion of the papers by the Honorable Simeon E. Baldwin, LL. D., Judge of the Supreme Court of Errors, Connecticut.

10. General and extemporaneous discussion (if the President is of the opinion that time permits).

11. Opportunity for propositions or reports from the Committee of Nations.

12. Opportunity for action on the same and discussion thereof.

13. Opportunity for presenting motions.

14. Adjournment by the President to 10 A. M., September 30th.

*Friday, September 30th, 10 A. M.*

1. Reading of minutes (unless waived).

2. Roll call of delegates who have registered since former roll call.

3. Paper by the Honorable Sir William R. Kennedy, Justice of the High Court of England. Subject: "To What Extent Should Judicial Action by Courts of a Foreign Nation be Recognized?" (Considered with especial reference to the status of individuals as affected by divorce or other decrees and the right to represent the person or property of another.)

4. Discussion of the paper by Sig. Avv. Angelo Pavia, Advocate of Rome, Italy, and the Honorable Wallace Nesbitt, Justice of the Supreme Court of the Dominion of Canada.

5. General and extemporaneous discussion of the same subject (if the President is of the opinion that time permits).

6. Opportunity for propositions or reports from the Committee of Nations.

7. Opportunity for action on the same and discussion thereof. (Intermission of one hour.)

8. Paper by the Honorable G. A. Finkelnburg, member of the St. Louis Bar. Subject: "The Protection which Should be Accorded to Private Property on the High Seas in Time of War."

9. Discussion of the subject of the paper by Chevalier Adalbert von Stibral, Vienna, Austria, and Mr. Everett P. Wheeler, member of the New York Bar.

10. General and extemporaneous discussion of the same subject (if the President is of the opinion that time permits).

11. Opportunity for propositions or reports from the Committee of Nations.

12. Opportunity for action on the same and discussion thereof.

13. Adjournment by the President, either *sine die* or to October 1st, at 10 A. M., for the completion of any unfinished business, as, upon the report of the Committee of Nations, the Congress may decide.

#### PROGRAMME OF SOCIAL EVENTS.

*Monday Evening, September 26th, 8 o'clock.*—Reception by the Missouri Bar Association, in the Missouri State Building, to the members of the American Bar Association and the delegates to the Universal Congress who may have arrived.

*Wednesday Evening, September 28th, 7.30 o'clock.*—Banquet by the Universal Exposition to the members of the Universal Congress and the members of the American Bar Association, at the Tyrolean Alps, main dining hall.

*Friday Evening, September 30th, 8 to 10 o'clock.*—Reception by the Board of Lady Managers of the Universal Exposition to the members of the Universal Congress and ladies of the party.

#### LIST OF DELEGATES ACCREDITED TO THE UNIVERSAL CONGRESS OF LAWYERS AND JURISTS.

##### *Key to Abbreviations.*

(\*) Foreign Delegates.

(aa) Government delegates (127) appointed by the President of the United States.

(a) Federal judges and judges of the State Appellate Courts of last resort who have accepted appointments as delegates *ex-officiis*.



(b) Delegates (100) appointed by the American Bar Association.

(c) Delegates appointed by State Bar Associations (equal in number to the representation of the state in the House of Representatives of the United States, but each state or territory entitled to a minimum of five).

(d) Delegates appointed by the courts of last resort in those states not having State Bar Associations. (Representation the same as c.)

(e) Delegates from the faculties of American law schools attached to state universities or members of the Association of American Law Schools.

(f) American Delegates-at-large, composed of eminent judges, jurists and lawyers specially appointed.

Abbott, B. F. (b).....Atlanta, Ga.  
 Abbott, Nathan (e).....Stanford University, Cal.  
 Acheson, Marcus W. (aa).....Pittsburg, Pa.  
 Adams, Elbridge L. (c).....Rochester, N. Y.  
 Adams, Samuel (e).....Chicago, Ill.  
 Ailshie, James F. (a).....Boise, Ida.  
 Allds, Jotham P. (c).....Norwich, N. Y.  
 Allen, Charles Claflin (aa).. ....St. Louis, Mo.  
 Allen, E. T. (f).....St. Louis, Mo.  
 Alvey, Richard H. (aa).....Washington, D. C.  
 Ambler, B. Mason (f).....Parkersburg, W. Va.  
 Ames, C. B. (c).....Oklahoma City, Okla.  
 Ames, James Barr (e).....Cambridge, Mass.  
 Anderson, William (c).....Lexington, Va.  
 Andrews, A. B., Jr. (c).....Raleigh, N. C.  
 Andrews, James DeWitt (aa).....Chicago, Ill.  
 Andrews, Lorrin (aa).....Honolulu, H. I.  
 Appel, W. N. (f).....Lancaster, Pa.  
 Archambault H. (\*).....Montreal, Canada.  
 Arellano, Cayetano (aa).....Manila, P. I.  
 Arnold, C. W. H. (c).....Poughkeepsie, N. Y.  
 Arnstein, Albert (f).....St. Louis, Mo.  
 Asp, Henry E. (b).....Guthrie, Okla.  
 Atkinson, Spencer R. (f).....Atlanta, Ga.  
 Auten, Voris (c).. ....Mt. Carmel, Pa.  
 Avery, Lincoln (c).....Port Huron, Mich.  
 Aylesworth, Allen Bristol (\*).....Toronto, Canada.

Azpiroz, Manuel (*).....	City of Mexico, Mexico.
Babb, James E. (d).....	Lewiston, Ida.
Babbitt, Kurnel R. (b).....	Colorado Springs, Col.
Baer, George F. (c) (f).....	Philadelphia, Pa.
Baker, Benjamin S. (c).....	Albuquerque, N. M.
Baker, Charles S. (c).....	Columbus, Ind.
Baker, James A. (f) .....	Houston, Tex.
Baker, Rhodes S. (c).....	Dallas, Tex.
Bakewell, Paul (b).....	St. Louis, Mo.
Baldwin, Clark E. (e).....	Adrian, Mich.
Baldwin, Simeon E. (aa).....	New Haven, Conn.
Ball, Dan H. (c).....	Marquette, Mich.
Bannon, J. W. (c). .....	Portsmouth, Ohio.
Barclay, Shepard (c).....	St. Louis, Mo.
Barnard, Job (a).....	Washington, D. C.
Barnes, Charles A. (f).....	Jacksonville, Ill.
Barney, S. S. (c).....	West Bend, Wis.
Bartch, George W. (a).....	Salt Lake City, Utah.
Bartlett, Edmund M. (b) .....	Omaha, Neb.
Barton, R. M., Jr. (c).....	Chattanooga, Tenn.
Bashford, R. M. (e).....	Madison, Wis.
Bassel, John (c).....	Clarksburg, W. Va.
Bate, J. Pawley (*).....	London, England.
Baxter, Irving F. (b).....	Omaha, Neb.
Bayless, S. O. (c).....	Cincinnati, Ohio.
Beale, Joseph H., Jr. (e).....	Chicago, Ill.
Bean, R. S. (a).....	Salem, Ore.
Beard, W. D. (a) (c) .....	Memphis, Tenn.
Beaty, A. L. (c).....	Sherman, Tex.
Beck, James M. (f).....	New York, N. Y.
Becker, Tracy C. (c).....	Buffalo, N. Y.
Beeber, Dimner (c).....	Philadelphia, Pa.
Benedict, Robert D. (b).....	New York, N. Y.
Benedict, William S. (c).....	New Orleans, La.
Bennett, R. B. (*).....	Calgary, Alta.
Benoist, J. (*).....	Bordeaux, France.

Bergen, James J. (b) (c).....	Somerville, N. J.
Bicksler, W. S. (f) .....	Denver, Col.
Bigelow, Harry Augustus (e).....	Chicago, Ill.
Biggar, C. M. (*).....	Edmonton, Alta.
Biggs, J. Crawford (c).....	Durham, N. C.
Bingham, Edward F. (a).....	Washington, D. C.
Bispham, George Tucker (aa).....	Philadelphia, Pa.
Bissell, Julius B. (c).....	Denver, Col.
Black, Alfred L. (c).....	Bellingham, Wash.
Black, Charles C. (c).....	Jersey City, N. J.
Black, J. C. C. (c).....	Augusta, Ga.
Blair, Henry P. (c).....	Washington, D. C.
Blanchard, L. C. (c).....	Oskaloosa, Iowa.
Blondel, Georges (*).....	Paris, France.
Blount, William A. (b).....	Pensacola, Fla.
Boddaert, M. Henri (*).....	Brussels, Belgium.
Bonaparte, Charles J. (aa).....	Baltimore, Md.
Bonnefield, M. S. (d) .....	Winnemucca, Nev.
Bonner, J. W. (c).....	Nashville, Tenn.
Booth, H. J. (c) (f).....	Columbus, Ohio.
Borah, W. E. (d). ....	Boise, Ida.
Boudeman, Dallas (c).....	Kalamazoo, Mich.
Boyd, James E. (c).....	Greensboro, N. C.
Boyle, Wilbur F. (aa).....	St. Louis, Mo.
Bradford, J. C. (c) .....	Nashville, Tenn.
Bradwell, James B. (c).....	Chicago, Ill.
Brainerd, Cephas (c).....	New York, N. Y.
Brandon, Morris (f).....	Atlanta, Ga.
Branham, Joel (c).....	Rome, Ga.
Braxton, A. C. (b).....	Staunton, Va.
Breaux, Joseph A. (c).....	Baton Rouge, La.
Breckenridge, Ralph W. (c).....	Omaha, Neb.
Breckons, Robert W. (c).....	Honolulu, H. I.
Breen, William P. (aa).....	Ft. Wayne, Ind.
Brennan, Michael (c) .....	Detroit, Mich.
Brewer, David J. (aa).....	Washington, D. C.

Brifant, J. (f) .....	Brussels, Belgium.
Brill, Hascal R. (c).....	St. Paul, Minn.
Briscoe, John P. (a).....	Prince Frederick, Md.
Bromberg, Frederick G. (c) .....	Mobile, Ala.
Brooks, Thomas J. (c).....	Bedford, Ind.
Brower, Ripley P. (c).....	St. Cloud, Minn.
Brown, Edward O. (c).....	Chicago, Ill.
Brown, Elon R. (c).....	Watertown, N. Y.
Brown, Frank P. (f).....	Norwich, Conn.
Brown, Frederick V. (c).....	Minneapolis, Minn.
Brown, George H. (c).....	Washington, D. C.
Brown, James F. (f).....	Charleston, W. Va.
Brown, J. Hay (c).....	Lancaster, Pa.
Brown, H. B. (aa).....	Washington, D. C.
Brown, Rome G. (b).....	Minneapolis, Minn.
Brown, T. J. (a).....	Austin, Tex.
Brown, W. Jethro (*).....	Aberystwyth, Wales.
Browne, A. B. (aa).....	Washington, D. C.
Bruce, Andrew A. (b).....	Grand Forks, N. D.
Brunialti, A. (*).....	Rome, Italy.
Buckler, William Hepburn (*).....	Baltimore, Md.
Bullitt, Thomas W. (f).....	Louisville, Ky.
Bunn, Henry G. (a).....	Little Rock, Ark.
Burch, Charles N. (f).....	Louisville, Ky.
Burford, John H. (a).....	Guthrie, Okla.
Burges, William H. (c).....	El Paso, Tex.
Burke, Timothy F. (f).....	Cheyenne, Wyo.
Burkett, Harlan F. (c).....	Findlay, Ohio.
Burleigh, Clarence (c).....	Pittsburg, Pa.
Burns, A. D. (c).....	Platte City, Mo.
Burroughs, J. B. (c).....	Painesville, Ohio.
Burwell, B. F. (a).....	El Reno, Okla.
Busbee, Fabius H. (f).....	Raleigh, N. C.
Butler, Charles Henry (aa).....	Washington, D. C.
Butler, Hugh (f).....	Denver, Col.
Byers, Lawrence M. (e).....	Iowa City, Iowa.

Cadwalader, John (b).....	Philadelphia, Pa.
Carey, Charles H. (b).....	Portland, Ore.
Carlisle, John G. (aa).....	New York, N. Y.
Carney, J. L. (c).....	Marshalltown, Iowa.
Carr, George H. (f)..	Des Moines, Iowa.
Carr, Lewis E. (c).....	Albany, N. Y.
Carson, Hampton L. (b).....	Philadelphia, Pa.
Carter, Hill (f).....	Richmond, Va.
Carter, H. C. (c).....	San Antonio, Tex.
Carter, James C. (aa)..	New York, N. Y.
Cary, Alfred L. (c).....	Milwaukee, Wis.
Cary, Alfred L. (e)..	Madison, Wis.
Cary, Martin (c).....	Buffalo, N. Y.
Castle, William R. (c).....	Honolulu, H. I.
Catron, T. B. (f).....	Santa Fé, N. M.
Chaplin, Hugh R. (c).....	Bangor, Me.
Chase, Arthur H. (c) .....	Concord, N. H.
Cheney, A. E. (d).....	Reno, Nev.
Choate, Joseph H. (aa).....	London, England.
Church, Melville (b).....	Washington, D. C.
Clabaugh, Harry M. (aa).....	Washington, D. C.
Clapp, Moses (c).....	St. Paul, Minn.
Clark, C. A. (f).....	Cedar Rapids, Iowa.
Clark, Gibson (f).....	Cheyenne, Wyo.
Clark, John F. (c).....	Brooklyn, N. Y.
Clayton, Henry D. (aa).....	Washington, D. C.
Clearwater, Alphonso T. (c).....	Kingston, N. Y.
Clement, L. H. (c).....	Salisbury, N. C.
Clephane, Walter C. (e).....	Washington, D. C.
Clifford, Charles W. (b).....	New Bedford, Mass.
Cochran, Alexander G. (b.).....	St. Louis, Mo.
Cockrell, Francis M. (aa).....	Washington, D. C.
Cohn, Morris M. (f).....	Little Rock, Ark.
Colahan, John B., Jr. (c).....	Philadelphia, Pa.
Cole, C. C. (c).....	Des Moines, Iowa.
Cole, Clarence L. (f).....	Atlantic City, N. J.

Colgrove, Philip T. (c).....	Hastings, Mich.
Colie, E. M. (c).....	Newark, N. J.
Colt, LeBaron B. (aa).....	Bristol, R. I.
Colwell, Francis (f).....	Providence, R. I.
Conrad, Holmes (aa).....	Washington, D. C.
Cook, E. E. (f).....	Davenport, Iowa.
Cooper, Lawrence (c).....	Huntsville, Ala.
Cornish, Leslie C. (c).....	Augusta, Me.
Coste, Paul F. (f).....	St. Louis, Mo.
Cou Tzu-ch'i (*).....	China (Washington, D. C.)
Coudert, Frederick R., Jr. (aa).....	New York, N. Y.
Cozier, R. V. (d).....	Moscow, Ida.
Crain, John H. (c).....	Ft. Scott, Kan.
Crawford, Coe I. (b).....	Huron, S. D.
Crawford, W. L. (c).....	Beaumont, Tex.
Crosby, J. O. (c).....	Garnavillo, Iowa.
Cummins, A. B. (b).....	Des Moines, Iowa.
Cunningham, Edward, Jr. (f).....	St. Louis, Mo.
Cunningham, George A. (c).....	Evansville, Ind.
Cunningham, Henry C. (c).....	Savannah, Ga.
Cunningham, S. M. (c).....	Lawton, Okla.
Curran, William P. (c).....	Pekin, Ill.
Curtis, Julius B. (b).....	Stamford, Conn.
Curtis, William S. (e).....	St. Louis, Mo.
Cuthbert, L. F. (b).....	Denver, Col.
Cutrer, J. W. (f).....	Clarksdale, Miss.
Dabney, Lewis S. (d).....	Boston, Mass.
Dailey, C. W. (f).....	Elkins, W. Va.
Dale, H. F. (e).....	Des Moines, Iowa.
Dalzell, John (aa).....	Washington, D. C.
Daniel, John W. (aa).....	Lynchburg, Va.
Dargan, W. F. (c).....	Darlington, S. C.
Davidson, Samuel P. (c).....	Tecumseh, Neb.
Davis, Frank D. M. (c).....	Ionia, Mich.
Davis, Henry E. (b).....	Washington, D. C.
Davis, Richard B. (c).....	Petersburg, Va.

Davis, Theodore P. (c) .....	Indianapolis, Ind.
Day, William R. (aa).....	Washington, D. C.
De Andreis, Vittorio (*).....	Ferrara, Italy.
DeArmond, David A. (aa).. .....	Butler, Mo.
Deemer, H. E. (c).....	Red Oak, Iowa.
Deemer, H. E. (a).....	Des Moines, Iowa.
DeGraffenried, Edward (c).....	Greensboro, Ala.
De la Garza, Emeterio (*).....	City of Mexico, Mexico.
Del Rosario, Tomas G. (c).....	Manila, P. I.
Denis, Henry (c).....	New Orleans, La.
Dennis, William Cullen (e).....	Stanford University, Cal.
Dennis, William H. (c).....	Washington, D. C.
De Sadelleer, Louis (*).....	Brussels, Belgium.
Dessau, Washington (c) .....	Macon, Ga.
De Wiart, L. Carton (*).....	Cairo, Egypt.
Dickinson, Don M. (aa).....	Detroit, Mich.
Dickinson, J. M. (aa).. .....	Chicago, Ill.
Dickinson, M. F. (aa).....	Boston, Mass.
Dickson, Samuel (aa).....	Philadelphia, Pa.
Dietrich, F. S. (d).....	Pocatello, Ida.
Dillard, F. C. (f) .....	Sherman, Tex.
Dillard, W. P. (c).....	Ft. Scott, Kan.
Dillon, John F. (aa).....	New York, N. Y.
Diven, Geo. M. (c).....	Elmira, N. Y.
Doan, Fletcher M. (a) .....	Florence, Ariz.
Dole, Sanford B. (aa).....	Honolulu, H. I.
Dolph, C. A. (c).....	Portland, Ore.
Donaldson, J. E. (c).....	Bainbridge, Ga.
Doolan, J. C. (c).....	Louisville, Ky.
Douglas, Albert (c).....	Chillicothe, Ohio.
Douglas, Edward W. (c).....	Troy, N. Y.
Douglas, Robert M. (a).....	Raleigh, N. C.
Doyle, John H. (c).....	Toledo, Ohio.
Drew, Irving W. (f).....	Lancaster, N. J.
Drouin, F. X. (*).....	Montreal, Canada.
Dryden, John N. (c).....	Kearney, Neb.

Dudley, C. A. (e).....	Des Moines, Iowa.
Dunbar, James R. (d).....	Brookline, Mass.
Durand, Lorenzo T. (c).....	Saginaw, Mich.
Du Relle, George (f).....	Louisville, Ky.
Earnest, John Paul (e).....	Washington, D. C.
Eastman, Edwin G. (f).....	Exeter, N. H.
Eastman, Samuel C. (f).....	Concord, N. H.
Eaton, Amasa M. (aa).....	Providence, R. I.
Eckstein, Otto G. (c).....	Wichita, Kan.
Eddy, Arthur J. (c).....	Chicago, Ill.
Edings, W. S. (a).....	Kailua, H. I.
Edson, Joseph R. (f).....	Washington, D. C.
Edwards, Stephen O. (f).....	Providence, R. I.
Eicher, H. M. (c).....	Washington, Iowa.
Elder, Samuel J. (d).....	Winchester, Mass.
Eliot, Edward C. (b).....	St. Louis, Mo.
Ellinwood, Everett E. (b).....	Prescott, Ariz.
Elliott, Charles B. (c).....	Minneapolis, Minn.
Ellis, A. C. (f).....	Salt Lake City, Utah.
Ellis, Wade H. (c)...	Cincinnati, Ohio.
Emery, Lucillius A. (a).....	Augusta, Me.
Estabrook, Henry D. (b).....	New York, N. Y.
Evans, E. B. (e)..	Des Moines, Iowa.
Evans, H. K. (c).....	Corydon, Iowa.
Evans, Montgomery (c)...	Norristown, Pa.
Evans, Walter (a).....	Louisville, Ky.
Ewing, Nathaniel (c).....	Uniontown, Pa.
Fabre, Edouard (*).....	Montreal, P. Q.
Fahlcrantz, Gustaf Edw. (*).....	Stockholm, Sweden.
Fairbanks, Charles W. (aa).....	Indianapolis, Ind.
Farrar, E. H. (f).....	New Orleans, La.
Farrington, E. S. (d).....	Elko, Nev.
Faulkner, Charles J. (c).....	Martinsburg, W. Va.
Faurest, L. A. (c).....	Elizabethtown, Ky.
Fenton, W. D. (f).....	Portland, Ore.
Fernandez, José V. (*).....	Argentine Republic.



- Ferraris, Carlo Francesco (\*).....Padua, Italy.  
 Ferris, Franklin (f) .....St. Louis, Mo.  
 Fiero, J. Newton (c).....Albany, N. Y.  
 Finkelnburg, G. A. (aa).....St. Louis, Mo.  
 Fish, Frederick P. (b).....Boston, Mass.  
 Fish, Daniel (c).....Minneapolis, Minn.  
 Fisher, D. D. (c).....St. Louis, Mo.  
 Fitz Gerald, Justice (\*).....Charlottetown, P. E. I.  
 Flausburg, C. C. (c).....Lincoln, Neb.  
 Fleischmann, Simon (c) .....Buffalo, N. Y.  
 Fletcher, John (b)... .....Little Rock, Ark.  
 Flynn, D. T. (f).....Oklahoma City, Okla.  
 Follansbee, George A. (b).....Chicago, Ill.  
 Follett, A. D. (f)... .....Marietta, Ohio.  
 Forney, J. H. (d).....Moscow, Ida.  
 Forster, George M. (f).....Spokane, Wash.  
 Fortunato, Ernesto (\*).....Naples, Italy.  
 Foster, John W. (aa).....Washington, D. C.  
 Fox, Austen G. (b).. .....New York, N. Y.  
 Fox, Edward J. (c).....Easton, Pa.  
 Franklin, Thomas H. (c).....San Antonio, Tex.  
 Frazer, Robert S. (c).....Pittsburg, Pa.  
 Freeman, W. P. (c).....South McAlester, I. T.  
 Freeman, Winfield (c).....Kansas City, Kan.  
 Freund, Ernest (e) .....Chicago, Ill.  
 Fuller, Melville W. (aa).....Washington, D. C.  
 Gabbert, William H. (f).....Denver, Col.  
 Gaglio, Calogero (\*).....Catania, Italy.  
 Galbraith, C. A. (a).....Honolulu, H. I.  
 Galt, Smith P. (f).....St. Louis, Mo.  
 Gans, Edgar H. (c).....Baltimore, Md.  
 Gantt, James B. (c).....Jefferson City, Mo.  
 Gardner, Rathbone (f).....Providence, R. I.  
 Garnett, Theodore S. (aa) (c).....Norfolk, Va.  
 Gere, Geo. W. (c).....Champaign, Ill.  
 Giancico, Francesco (\*) .....Catania, Italy.

Gibson, N. A. (c) .....	Muskogee, I. T.
Gilbert, Barry (e) .....	Iowa City, Iowa.
Gilbert, William B. (aa) .....	Portland, Ore.
Gill, Joseph A. (a) .....	Vinita, I. T.
Gilmore, E. A. (e) .....	Madison, Wis.
Glenn, Joseph Morrison (*) .....	Toronto, Canada.
Goetchius, H. R. (c) .....	Columbus, Ga.
Goff, Nathan (aa) .....	Clarksburg, W. Va.
Goodelle, William P. (c) .....	Syracuse, N. Y.
Goodrich, Ben. (c) .....	Tombstone, Ariz.
Gose, John T. (b) .....	Chicago, Ill.
Grace, H. H. (c) .....	Superior, Wis.
Graham, Samuel (c) .....	Tazewell, Va.
Grant, Alexander (*) .....	Manchester, England.
Graves, Carroll B. (c) .....	Ellensburg, Wash.
Greeley, Louis May (e) .....	Chicago, Ill.
Green, J. W. (c) .....	Lawrence, Kan.
Greene, George G. (c) .....	Green Bay, Wis.
Gregory, Charles Noble (e) .....	Iowa City, Iowa.
Grey, Norman (c) .....	Camden, N. J.
Griffin, Samuel (c) .....	Bedford City, Va.
Griggs, John W. (aa) .....	New York, N. Y.
Gross, William L. (c) .....	Springfield, Ill.
Grosscup, Peter S. (a) .....	Chicago, Ill.
Grubb, Ignatius C. (a) .....	Dover, Del.
Guthrie, George W. (b) .....	Pittsburg, Pa.
Guthrie, William D. (aa) .....	New York, N. Y.
Hager, John F. (c) .....	Ashland, Ky.
Hagerman, Frank (b) .....	Kansas City, Mo.
Hagerman, James (aa) .....	St. Louis, Mo.
Haight, Albert (a) .....	Albany, N. Y.
Hainer, Bayard T. (a) .....	Perry, Okla.
Hale, John C. (c) .....	Cleveland, Ohio.
Hall, James Parker (e) .....	Chicago, Ill.
Hall, W. C. (c) .....	Covington, Ky.
Hamill, Charles H. (c) .....	Chicago, Ill.

Hamilton, Alexander (b).....	Petersburg, Va.
Hamilton, George E. (c).....	Washington, D. C.
Hamilton, J. W. (f).....	Roseburg, Ore.
Hamlin, Hannibal E. (b).....	Ellsworth, Me.
Hammond, Edwin P. (c).....	Lafayette, Ind.
Hammond, W. M. (c).....	Thomasville, Ga.
Haney, Dick (a).....	Pierre, S. D.
Hanford, Cornelius H. (a).....	Seattle, Wash.
Hardin, John R. (c).....	Newark, N. J.
Hargest, William M. (c).....	Harrisburg, Pa.
Haring, Cornelius (c).....	Milwaukee, Wis.
Harker, Oliver A. (e) (c).....	Champaign, Ill.
Harlan, James S. (a).....	Chicago, Ill.
Harlan, John Maynard (c).....	Chicago, Ill.
Harmon, Judson (aa).....	Cincinnati, Ohio.
Harnish, M. M. (f).....	Lancaster, Pa.
Harriman, Edward A. (e).....	Boston, Mass.
Harriman, Edward Avery (b).....	Derby, Conn.
Harris, Addison C. (c).....	Indianapolis, Ind.
Harris, John C. (c).....	Galveston, Tex.
Harris, S. H. (c).....	Perry, Okla.
Harrison, George P. (c).....	Opelika, Ala.
Hart, W. O. (f).....	New Orleans, La.
Hartmann, Adolph (*).....	Berlin, Germany.
Hartshorne, Charles H. (c).....	Jersey City, N. J.
Harvey, Thomas B. (f).....	St. Louis, Mo.
Hastings, William G. (c).....	Wilbur, Neb.
Haughton, R. B. (f).....	St. Louis, Mo.
Hawkins, W. A. (c).....	Alamogordo, N. M.
Hay, John (aa).....	Washington, D. C.
Hayes, Samuel (e).....	Iowa City, Iowa.
Hayes, William S. (*).....	Dublin, Ireland.
Hearne, David (*).....	Sydney, Cape Breton.
Heath, H. M. (f).....	Augusta, Me.
Heiskell, F. H. (c).....	Memphis, Tenn.
Heister, Isaac (c).....	Reading, Pa.

Hemenway, Alfred (aa).....	Boston, Mass.
Henderson, David B. (b) .....	Dubuque, Iowa.
Henderson, D. S. (c) .....	Aiken, S. C.
Henderson, William A. (f).....	Washington, D. C.
Henning, D. C. (c).....	Pottsville, Pa.
Henry, Francis J. (aa).....	San Francisco, Cal.
Hensel, W. U. (b)... ..	Lancaster, Pa.
Hepburn, Charles M. (e) .....	Bloomington, Ind.
Herbert, C. L. (c) .....	Ardmore, I. T.
Herbert, Hilary A. (f).....	Washington, D. C.
Hereford, F. H. (c).....	Tucson, Ariz.
Herndon, J. C. (f) (e).....	Prescott, Ariz.
Hessberg, Albert (c).....	Albany, N. Y.
Hill, B. H. (c).....	Atlanta, Ga.
Hill, David B. (c).....	Albany, N. Y.
Hill, James E. (c).....	Livingston, Tex.
Hill, Walter B. (e).....	Athens, Ga.
Hinkley, John (aa).....	Baltimore, Md.
Hinton, Edward W. (e)... ..	Columbia, Mo.
Hoar, George F. (aa).....	Worcester, Mass.
Hoar, Rockwood (d).....	Worcester, Mass.
Hodges, Wm. V. (c) (e).....	Denver, Col.
Hoehling, A. A., Jr. (f).....	Washington, D. C.
Hoffman, William (c) .....	Muscatine, Iowa.
Hogate, Enoch G. (e).....	Bloomington, Ind.
Hogsett, T. H. (c)... ..	Cleveland, Ohio.
Holdom, Jesse (c).....	Chicago, Ill.
Holmes, J. T. (c). .....	Columbus, Ohio.
Holmes, Oliver Wendell (aa).....	Washington, D. C.
Holt, William H. (a)... ..	San Juan, P. R.
Hook, William C. (a).....	St. Paul, Minn.
Hopkins, E. H. (c).....	Cleveland, Ohio.
Hornblower, William B. (aa) (c)...	New York, N. Y.
Horner, H. R. (c).....	Pierre, S. D.
Hough, Warwick (c).....	St. Louis, Mo.
Howat, Andrew (f) .....	Salt Lake City, Utah.

Howe, William Wirt (aa) (c).....	New Orleans, La.
Howry, Charles B. (a).....	Washington, D. C.
Hoyt, Henry M. (aa).....	Washington, D. C.
Hoyt, James H. (aa).....	Cleveland, Ohio.
Hoyt, Lucius W. (b).....	Denver, Col.
Hudson, J. H. (c).....	Bennettsville, S. C.
Huffaker, F. M. (d).....	Virginia City, Nev.
Huffcut, Ernest W. (c) (e).....	Ithaca, N. Y.
Hughes, Charles J., Jr. (f).....	Denver, Col.
Hundley, Oscar R. (b).....	Huntsville, Ala.
Hunsaker, William J. (c).....	Los Angeles, Cal.
Hunt, William H. (aa).....	San Juan, P. R.
Hunter, Gordon (*).....	Victoria, B. C.
Hunter, William R. (c).....	Kankakee, Ill.
Hurley, M. A. (c).....	Wausau, Wis.
Hutchings, William T. (f).....	Muskogee, I. T.
Hutchins, Edward W. (d).....	Boston, Mass.
Ingalsbe, Grenville M. (c).....	Sandy Hill, N. Y.
Ingersoll, Henry H. (b).....	Knoxville, Tenn.
Irvine, R. Tate (f).....	Big Stone Gap, Va.
Irving, Aemilius (*).....	Toronto, Canada.
Jackson, A. A. (c).....	Janesville, Wis.
Jackson, Clifford L. (f).....	Muskogee, I. T.
Jacobs, Thomas P. (c).....	New Martinsville, W. Va.
James, Edward J. (*).....	Evanston, Ill.
James, Francis B. (b).....	Cincinnati, Ohio.
January, William L. (b).....	Detroit, Mich.
Jenkins, James G. (aa).....	Milwaukee, Wis.
Jenkins, John J. (aa).....	Chippewa Falls, Wis.
Jenkins, Theodore F. (c).....	Philadelphia, Pa.
Jennings, Andrew J. (d).....	Fall River, Mass.
Jennings, Robert W. (b).....	Skagway, Alaska.
Jewett, Charles L. (c).....	New Albany, Ind.
Jitta, D. Josephus (*).....	Amsterdam, Holland.
Johnson, Frank Asbury (c).....	Chicago, Ill.
Johnson, John D. (f).....	St. Louis, Mo.

Johnson, John G. (aa).....Philadelphia, Pa.  
 Johnson, William G. (e).....Washington, D. C.  
 Joline, Adrian H. (b).....New York, N. Y.  
 Jones, A. A. (c).....East Las Vegas, N. M.  
 Jones, Burr W. (b) (e).....Madison, Wis.  
 Jonson, Jep. C. (c).....Greenville, Ky.  
 Jordan, David Starr (e).....Stanford University, Cal.  
 Jordan, John H. (c).....Bedford, Pa.  
 Judd, J. W. (c).....Nashville, Tenn.  
 Judson, Frederick N. (b).....St. Louis, Mo.  
 Kales, Albert Martin (e).....Chicago, Ill.  
 Kane, M. J. (c).....Kingfisher, Okla.  
 Keasbey, Edward Q. (aa).....Newark, N. J.  
 Keeling, J. H. (\*).....London, England.  
 Keller, Benjamin F. (a).....Bramwell, W. Va.  
 Kelley, John S. (c).....Bardstown, Ky.  
 Kellogg, F. H. (c).....South McAlester, I. T.  
 Kellogg, Frank B. (aa). ....St. Paul, Minn.  
 Kelly, Joseph L. (c).....Bristol, Va.  
 Kennedy, Sir William R. (\*).....London, England.  
 Kent, Edward (aa).....Phoenix, Ariz.  
 Kent, Henry T. (f).....St. Louis, Mo.  
 Kern, Robert H. (f).....St. Louis, Mo.  
 Kernan, Thomas J. (b).....Baton Rouge, La.  
 Ketcham, William A. (f).....Indianapolis, Ind.  
 Key, William M. (c).....Austin, Tex.  
 Keysor, William W. (e).....St. Louis, Mo.  
 Kibler, Edward (c).....Newark, Ohio.  
 King, Edmund B. (c).....Sandusky, Ohio.  
 Kirchwey, George W. (e).....New York, N. Y.  
 Kittredge, Alfred B. (aa).....Washington, D. C.  
 Kivel, John (f).....Dover, Del.  
 Klein, Jacob (aa)....St. Louis, Mo.  
 Knox, P. C. (aa).....Pittsburg, Pa.  
 Koon, M. B. (c).....Minneapolis, Minn.  
 Kruttschnitt, E. B. (aa) (c) .....New Orleans, La.

Lacey, John W. (f).....	Cheyenne, Wyo.
Ladd, Sanford B. (c)....	Kansas City, Mo.
Ladd, Scott M. (c).....	Sheldon, Iowa.
La Fontaine, Henri (*).....	Brussels, Belgium.
Lamm, Henry (c).....	Sedalia, Mo.
Lathrop, Gardiner (f) .....	Kansas City, Mo.
Lawrence, W. R. (a).....	Vinita, I. T.
Lawson, John D. (f).....	Columbia, Mo.
Lawson, Thomas C. (c).....	Eatonton, Ga.
Laylin, L. C. (c).....	Norwalk, Ohio.
Lee, John F. (f).....	St. Louis, Mo.
Leger, J. N. (*).....	Haiti.
Lehmann, Frederick W. (aa).....	St. Louis, Mo.
Letton, C. B. (c).....	Fairbury, Neb.
Levi, T. Arthur (*).....	Aberystwyth, Wales.
Lewis, William Draper (e).....	Philadelphia, Pa.
Lewis, Yancey (c).....	Austin, Tex.
Libby, Charles F. (aa) .....	Portland, Me.
Liddon, Benjamin S. (f).....	Marianna, Fla.
Lindsley, Smith M. (c).....	Utica, N. Y.
Lionberger, Isaac H. (aa).....	St. Louis, Mo.
Little, Gilbert F. (a).....	Hilo, H. I.
Littlefield, Charles E. (aa) (f).....	Rockland, Me.
Littleton, Martin W. (a).....	Brooklyn, N. Y.
Logan, Walter S. (aa) (c).....	New York, N. Y.
London, A. T. (f).....	Birmingham, Ala.
Lorente, P. Tomas (*).....	New Orleans, La.
Lougheed, J. A. (*).....	Calgary, Alta, Can.
Lurton, Horace H. (aa).....	Nashville, Tenn.
Luse, L. K. (f).....	Superior, Wis.
McAllister, W. K. (a).....	Nashville, Tenn.
McAlvay, Aaron V. (c).....	Manistee, Mich.
McBride, Henry (f).....	Olympia, Wash.
McCain, W. S. (f).....	Little Rock, Ark.
McClain, Emlin (a).....	Des Moines, Iowa.
McClench, William W. (d).....	Springfield, Mass.

McClung, William H. (c).....Pittsburg, Pa.  
 McComas, L. E. (f)... ..Williamsport, Md.  
 McCormick, Marshall (c).....Berryville, Va.  
 McCrary, Alvin J. (aa).....Binghamton, N. Y.  
 McDermott, E. J. (c).....Louisville, Ky.  
 McDonald, Henry D. (f).....Paris, Tex.  
 McDonald, J. E. (c).....Winsboro, S. C.  
 McDonough, John T. (c) .....Manila, P. I.  
 McFie, John R. (a)..... ..Santa Fé, N. M.  
 McGammon, Joseph K. (c).....Washington, D. C.  
 McHenry, W. H. (e).....Des Moines, Iowa.  
 McKenna, Joseph (aa) .....Washington, D. C.  
 McKenney, Frederick D. (c).....Washington, D. C.  
 McLean, Donald (c).....New York, N. Y.  
 McNulty, George F. (c).....East St. Louis, Ill.  
 McPherson, Smith (a).....Red Oak, Iowa.  
 McQuown, Lewis (c).....Bowling Green, Ky.  
 Macdonnell, Sir John (\*).....London, England.  
 MacVeagh, Wayne (aa).....Washington, D. C.  
 Mack, Julian William (e).....Chicago, Ill.  
 Mackey, A. M. (c)..... ..Pond Creek, Okla.  
 Macmaster, D. (\*)..... ..Montreal, Canada.  
 Madden, James (c).....Keene, N. H.  
 Magruder, Benjamin D. (a).....Springfield, Ill.  
 Mairoana, Gaetano (\*).....Catania, Italy.  
 Malone, J. H. (c).....Memphis, Tenn.  
 Manderson, Charles F. (aa).....Omaha, Neb.  
 Manly, Clement (c).....Winsboro, N. C.  
 Manson, Edward W. D. (\*) .....London, England.  
 Mapa, Victoriano (c).....Manila, P. I.  
 Marbury, Wm. L. (c).....Baltimore, Md.  
 Marshall, Louis (c).....New York, N. Y.  
 Martin, Norman J. (c).....New Castle, Pa.  
 Marvin, U. L. (c).....Akron, Ohio.  
 Mason, Henry F. (a).....Topeka, Kan.  
 Mattingly, William F. (c).....Washington, D. C.



Maury, William A. (e).....	Washington, D. C.
Maxwell, Lawrence, Jr. (b).....	Cincinnati, Ohio.
Mechem, Floyd Russell (e).....	Chicago, Ill.
Meili, F. (*).....	Zurich, Switzerland.
Meldrim, P. W. (aa).....	Savannah, Ga.
Melton, W. D. (c).....	Columbia, S. C.
Mercur, Rodney A. (aa).....	Towanda, Pa.
Mestrezat, Leslie S. (a).....	Philadelphia, Pa.
Metcalf, C. W. (c).....	Memphis, Tenn.
Mikell, William E. (e).....	Philadelphia, Pa.
Milburn, John G. (c).....	New York, N. Y.
Miller, Charles W. (c).....	Indianapolis, Ind.
Miller, Clarence H. (c).....	Austin, Tex.
Miller, Frank H. (b).....	Augusta, Ga.
Miller, John S. (c).....	Chicago, Ill.
Miller, T. S. (b).....	Dallas, Tex.
Miller, W. H. H. (aa).....	Indianapolis, Ind.
Milliken, J. D. (c).....	McPherson, Kan.
Mills, Isaac N. (c).....	Mt. Vernon, N. Y.
Mills, William J. (a) (c).....	Las Vegas, N. M.
Minor, Benjamin S. (c).....	Washington, D. C.
Minor, Raleigh C. (f).....	Charlottesville, Va.
Mollohan, Wesley (c).....	Charleston, W. Va.
Monks, Leander J. (c).....	Winchester, Ind.
Monroe, Charles (f).....	Los Angeles, Cal.
Montgomery, M. A. (f).....	Oxford, Miss.
Monti-Guarnieri, Stanislao (*).....	Rome, Italy.
Moody, William H. (aa).....	Washington, D. C.
Moore, C. F. (c).....	Covington, Va.
Moore, J. B. (a).....	Lansing, Mich.
Moore, J. M. (c).....	Little Rock, Ark.
Moore, J. W. (c).....	Brownsville, Tenn.
Moore, John Bassett (aa).....	New York, N. Y.
Moores, Merrill (b).....	Indianapolis, Ind.
Moot, Adelbert (c).....	Buffalo, N. Y.
Mordecai, T. Moultrie (f).....	Charleston, S. C.

Morgan, John T. (aa).....	Selma, Ala.
Morling, Edgar A. (c).....	Emmetsburg, Iowa.
Morrill, John A. (c).....	Auburn, Me.
Morris, John (b).....	Fort Wayne, Ind.
Morris, Martin F. (a).....	Washington, D. C.
Morris, Sylvanus (e).....	Athens, Ga.
Morris, Thos. J. (a).....	Baltimore, Md.
Morrison, R. E. (c).....	Prescott, Ariz.
Morton, J. R. (c).....	Lexington, Ky.
Moses, Adolph (c).....	Chicago, Ill.
Mosman, C. A. (c).....	St. Joseph, Mo.
Moulton, Henry P. (d).....	Salem, Mass.
Mower, George S. (c)...	Newberry, S. C.
Munger, Wm. H. (a)...	Omaha, Neb.
Nagel, Charles (aa).....	St. Louis, Mo.
Nash, L. J. (c).....	Manitowoc, Wis.
Needham, Charles W. (c).....	Washington, D. C.
Nellis, Andrew J. (c).....	Johnstown, N. Y.
Nerinx, Alfred (*).....	Brussels, Belgium.
Nesbitt, Wallace (*).....	Ottawa, Canada.
Newman, William T. (a).....	Atlanta, Ga.
Nicholson, John R. (a).....	Dover, Del.
Nields, Benjamin (f).....	Wilmington, Del.
Niles, Henry C. (c).....	York, Pa.
Niles, William H. (d).....	Lynn, Mass.
Noble, John W. (aa).....	St. Louis, Mo.
Norton, J. K. M. (c).....	Alexandria, Va.
Nott, Charles C. (aa).....	Washington, D. C.
Noyes, George H. (c).....	Milwaukee, Wis.
Obeyesekere, D. (*).....	Colombo, Ceylon.
O'Brien, Thomas J. (b).....	Grand Rapids, Mich.
O'Donnell, Thomas J. (b).....	Denver, Col.
O'Melveny, Henry W. (f).....	Los Angeles, Cal.
Ogden, Howard N. (e).....	Chicago, Ill.
Olney, Richard (aa).....	Boston, Mass.
Orendorf, Alfred (c).....	Springfield, Ill.

Orlady, George B. (c).....	Huntingdon, Pa.
Ostrander, Russell C. (c).....	Lansing, Mich.
Page, George T. (c).....	..Peoria, Ill.
Page, Howard W. (c).....	Philadelphia, Pa.
Palmer, Henry W. (aa).....	Wilkes-Barre, Pa.
Palmer, Truman F. (b).....	Monticello, Ind.
Pancoast, J. L. (a).....	Alva, Okla.
Pardee, Don A. (aa) .....	New Orleans, La.
Park, O. A. (c).....	Macon, Ga.
Parker, Cortlandt (aa).....	Newark, N. J.
Parker, R. Wayne (b).....	Newark, N. J.
Parker, Samuel (c).....	Plymouth, Ind.
Patterson, Lindsay (c).....	Winsboro, N. C.
Patterson, Thomas (aa).....	Pittsburg, Pa.
Patteson, S. S. P. (b) .....	Richmond, Va.
Pattison, Everett W. (f).....	St. Louis, Mo.
Pearce, James A. (a).....	Annapolis, Md.
Peck, George R. (aa).....	Chicago, Ill.
Peckham, Wheeler H (aa).....	New York, N. Y.
Peckham, Rufus W. (aa).....	Washington, D. C.
Peele, Stanton J. (e).....	Washington, D. C.
Pennypacker, Samuel W. (c).....	Harrisburg, Pa.
Perkins, E. B. (f).....	Dallas, Tex.
Perkins, Robert J. (c).....	New Orleans, La.
Perry, Charles W. (c)..	Clare, Mich.
Persons, A. P. (f).....	Talbotton, Ga.
Peter, Arthur (e).....	Washington, D. C.
Philips, John F. (a).....	Kansas City, Mo.
Phillimore, George C. (*).....	London, England.
Phillips, Isaac N. (c).....	Bloomington, Ill.
Pickens, Samuel O. (c).....	Indianapolis, Ind.
Pickle, G. W. (c).....	Knoxville, Tenn.
Pieris, R. E. (*).....	Colombo, Ceylon.
Pilcher, J. S. (c).....	Nashville, Tenn.
Pillsbury, E. S. (f).....	San Francisco, Cal.
Pittman, Key (d).....	Tonapah, Nev.

Pleasants, R. A. (c).....	Cuero, Tex.
Pollock, John C. (a).....	Topeka, Kan.
Pope, William H. (aa).....	Roswell, N. M.
Potter, Charles N. (a).....	Cheyenne, Wyo.
Potter, William P. (a).....	Pittsburg, Pa.
Pou, J. H. (c) .....	Raleigh, N. C.
Pound, Roscoe (c).....	Lincoln, Neb.
Powers, Llewellyn (c).....	Houlton, Me.
Pranker, Archibald Arthur (*)....	Oxford, England.
Prescott, Thos. J. (c) .....	Phoenix, Ariz.
Priest, H. S. (c).....	St. Louis, Mo.
Provosty, Oliver O. (a).....	Baton Rouge, La.
Pruden, W. D. (c).....	Edenton, N. C.
Quinones, Jose Severo (aa).....	San Juan, P. R.
Ralls, Joseph G. (b).....	Atoka, I. T.
Ralston, Jackson H. (c).....	Washington, D. C.
Ralston, Robert (c).....	Philadelphia, Pa.
Rassieur, Leo (f) .....	St. Louis, Mo.
Rawle, Francis (aa).....	Philadelphia, Pa.
Raymond, Charles W. (a).....	Muskogee, I. T.
Read, W. H. A. (c).....	Toledo, Ohio.
Redwine, R. B. (c).....	Monroe, N. C.
Reed, James H. (aa).....	Pittsburg, Pa.
Renkin, Jules (*).....	Brussels, Belgium.
Reyburn, Valle (f).....	St. Louis, Mo.
Reynolds, Ross (c).....	Kittanning, Pa.
Rice, Charles E. (e).....	Deadwood, S. D.
Rice, J. Kearney (c).....	New Brunswick, N. J.
Rice, W. C. (c).....	Deadwood, S. D.
Richards, H. S. (e).....	Madison, Wis.
Richards, John K. (aa).....	Cincinnati, Ohio.
Riddell, William Renwick (*).....	Toronto, Canada.
Ridgely, Henry, Jr. (f).....	Dover, Del.
Riggs, James M. (c)..	Winchester, Ill.
Robbins, Edward D. (f).....	Hartford, Conn.
Robert, Edward S. (aa).....	St. Louis, Mo.

Roberts, Vasco H. (e).....	Columbia, Mo.
Robertson, George (c).... .	Mexico, Mo.
Robertson, George T. (*).....	London, England.
Rodenbeck, Adolph J. (c).....	Rochester, N. Y.
Rogers, Henry T. (c).....	Denver, Col.
Rogers, James T. (c).....	Binghamton, N. Y.
Rogers, John H. (a).....	Ft. Smith, Ark.
Rogers, Platt (aa).....	Denver, Col.
Rogers, William P. (e).....	Cincinnati, Ohio.
Rolapp, H. H. (f).....	Ogden, Utah.
Rollit, Sir Albert K. (*).....	London, England.
Root, Elihu (aa).....	New York, N. Y.
Rose, George B. (aa).....	Little Rock, Ark.
Rose, James H. (c).....	Auburn, Ind.
Rose, U. M. (aa).....	Little Rock, Ark.
Rosendale, Simon W. (c).....	Albany, N. Y.
Roskowski, Gustav (*).....	Lemberg, Austria.
Rossington, W. H. (f).....	Topeka, Kan.
Roulhac, Thomas R. (c).....	Sheffield, Ala.
Rouse, John D. (c).....	New Orleans, La.
Rowe, L. S. (*).....	Philadelphia, Pa.
Rowell, Clinton (f).....	St. Louis, Mo.
Roy, R. F. (c).....	New London, Mo.
Ruhl, C. H. (c).....	Reading, Pa.
Runnells, John S. (b).....	Chicago, Ill.
Russell, Henry M. (c).....	Wheeling, W. Va.
Russell, J. J. (c).....	Charleston, Mo.
Russell, Talcott H. (f).....	New Haven, Conn.
Rutledge, Benjamin H. (f).....	Charleston, S. C.
St. John, C. J. (c).....	Bristol, Tenn.
Sanborn, A. L. (c).....	Madison, Wis.
Sanborn, Walter B. (aa).....	St. Paul, Minn.
Sanford, E. T. (c).....	Knoxville, Tenn.
Sawyer, Alfred P. (d).....	Lowell, Mass.
Sayler, Samuel M. (c).....	Huntington, Ind.
Scallon, William (f).....	Butte, Mont.

Scarritt, Ed. L. (f).	Kansas City, Mo.
Schaller, Albert (c).	Hastings, Minn.
Schley, Buchanan (c).	Hagerstown, Md.
Schnabel, Charles J. (f).	Portland, Ore.
Schofield, F. L. (f).	Hannibal, Mo.
Schofield, William (b).	Boston, Mass.
Schofield, William (e).	Chicago, Ill.
Scialoia, Vittorio (*).	Rome, Italy.
Scott, James B. (e).	New York, N. Y.
Scott, William (c).	Pittsburg, Pa.
Searcy, W. W. (c).	Brenham, Tex.
Searle, Alonzo T. (c).	Honesdale, Pa.
Sears, W. G. (c).	San Antonio, Tex.
Seddon, James A. (f).	St. Louis, Mo.
Sexton, Pliny T. (c).	Palmyra, N. Y.
Shack, Ferdinand (aa).	New York, N. Y.
Shackelford, Thomas M. (a).	Tallahassee, Fla.
Sharp, George M. (aa).	Baltimore, Md.
Sharp, J. F. (c).	Purcell, I. T.
Shaw, Leslie M. (aa).	Washington, D. C.
Shepard, Charles E. (b).	Seattle, Wash.
Shepard, Edward M. (c).	New York, N. Y.
Shepard, Seth (a).	Washington, D. C.
Sheppard, Theodore F. (c).	Bay City, Mich.
Sherwood, Adiel (f).	St. Louis, Mo.
Sherwood, Thomas A. (c).	Springfield, Mo.
Shields, George H. (f).	St. Louis, Mo.
Shippen, Joseph (c).	Seattle, Wash.
Short, Frank H. (f).	Fresno, Cal.
Short, James (*).	Calgary, Alta, Can.
Siddons, F. L. (f).	Washington, D. C.
Simmons, W. E. (c).	Lawrenceville, Ga.
Simon, J. A. (*).	London, England.
Simons, James (f).	Charleston, S. C.
Sivley, Clarence L. (f).	Oxford, Miss.
Skinker, Thomas K. (f).	St. Louis, Mo.

Slocum, Edward T. (d).....	Pittsfield, Mass.
Slocum, Winfield S. (d).....	Newton, Mass.
Slonecker, J. G. (c).....	Topeka, Kan.
Sluss, Henry C. (f).....	Wichita, Kan.
Smith, Alfred P. (f).....	Philadelphia, Pa.
Smith, Burton (f).....	Atlanta, Ga.
Smith, Charles Blood (f).....	Topeka, Kan.
Smith, Eleneious (f).....	St. Louis, Mo.
Smith, Fred Dumont (c).....	Kinsley, Kan.
Smith, Gregory L. (f).....	Mobile, Ala.
Smith, Lyndon A. (c).....	Montevideo, Minn.
Smith, Monroe (*).....	New York, N. Y.
Smith, William R. (a).....	Topeka, Kan.
Sondley, Foster A. (f) .....	Asheville, N. C.
Soper, P. L. (f).....	Vinita, I. T.
Spear, William T. (c).....	Warren, Ohio.
Speed, Horace (f).....	Guthrie, Okla.
Speer, Emory (a).....	Macon, Ga.
Spencer, O. M. (c).....	St. Joseph, Mo.
Spencer, Selden P. (b).....	St. Louis, Mo.
Spooner, John C. (aa).....	Madison, Wis.
Spurlock, Frank (c).....	Chattanooga, Tenn.
Squire, Andrew (b).....	Cleveland, Ohio.
Staake, William H. (c) .....	Philadelphia, Pa.
Stanley, William L. (c).....	Honolulu, H. I.
Steele, Robert W. (a).....	Denver, Col.
Sterling, Thomas (c).....	Redfield, S. D.
Stevens, John S. (c).....	Peoria, Ill.
Stewart, John (c).....	Chambersburg, Pa.
Stewart, Russell C. (c).....	Easton, Pa.
Stiness, John H. (a).....	Providence, R. I.
Stone, Charles W. (c).....	Warren, Pa.
Stone, James (f).....	Oxford, Miss.
Storey, Moorfield (aa).....	Boston, Mass.
Strawn, Lester H. (c).....	Ottawa, Ill.
Stringer, Edward C. (c)..	St. Paul, Minn.

Stuart, Charles B. (f).....	South McAlester, I. T.
Sullivan, John J. (f).....	Columbus, Neb.
Sulzbacher, Louis (a) .....	Muskogee, I. T.
Sulzbacher, Mayer (f).....	Philadelphia, Pa.
Sumulong, Juan (c).....	Manila, P. I.
Sun Shi-i (*).....	China (Washington, D. C.)
Sutor, Oscar (c).....	Manila, P. I.
Sutro, Theodore (f).....	New York, N. Y.
Swaney, W. B. (f).....	Chattanooga, Tenn.
Sweeney, John P. (d).....	Lawrence, Mass.
Sweet, Willis (aa).....	San Juan, P. R.
Symonds, Joseph W. (c).....	Portland, Me.
Taft, Elihu B. (b).....	Burlington, Vt.
Taft, William H. (aa).....	Washington, D. C.
Tarrant, W. D. (c).....	Milwaukee, Wis.
Taussig, George W. (f).....	St. Louis, Mo.
Taylor, Hannis (e).....	Washington, D. C.
Taylor, John A. (f) .....	New York, N. Y.
Taylor, Robert S. (f).....	Ft. Wayne, Ind.
Taylor, William L. (c).....	Indianapolis, Ind.
Teasdale, W. B. (c).....	Kansas City, Mo.
Tenney, Horace Kent (e).....	Chicago, Ill.
Terry, J. W. (b).....	Galveston, Tex.
Thomas, Bissell (c).....	Phoenix, Ariz.
Thomas, Edward H. (f).....	Washington, D. C.
Thomas, W. G. M. (c) .....	Chattanooga, Tenn.
Thomas, William H. (c).....	Montgomery, Ala.
Thompson, Albert C. (a).....	Cincinnati, Ohio.
Thompson, R. H. (b).....	Jackson, Miss.
Thompson, Will H. (c).....	Seattle, Wash.
Thornton, D. L. (c).....	Versailles, Ky.
Thurman, B. G. (c).....	Lamar, Mo.
Tichenor, Charles O. (b).....	Kansas City, Mo.
Tighe, Ambrose (c).....	St. Paul, Minn.
Tillinghast, James (f).....	Providence, R. I.
Toulmin, Harry T. (a).....	Mobile, Ala.



- Towner, H. M. (c).....Corning, Iowa.  
 Trabue, Edmund F. (f).....Louisville, Ky.  
 Tracy, Benjamin F. (aa).....New York, N. Y.  
 Trezevant, M. B. (c).....Memphis, Tenn.  
 Trieber, Jacob (a)... ..Little Rock, Ark.  
 Tripp, Bartlett (f) (c).....Yankton, S. D.  
 Troy, Alexander (c).....Montgomery, Ala.  
 Tuck, Philemon H. (c).....Baltimore, Md.  
 Tuck, Somerville Pinckney (\*).....Cairo, Egypt.  
 Tucker, Henry St. George (aa).....Lexington, Va.  
 Tunstall, Richard B. (c).....Norfolk, Va.  
 Turner, George (aa).....Spokane, Wash.  
 Turner, R. W. (c).....Mankato, Kan.  
 Tuthill, Henry B. (c).....Michigan City, Ind.  
 Valyi, Gabriel (\*).....Kolozsvar Univ., Hungary.  
 Van Bibber, George L. (c).....Bel Air, Md.  
 Van Cuylenburg, Hector (\*).....Colombo, Ceylon.  
 Vance, William R. (e) (c).....Waynesboro, Va.  
 Van Cise, Edwin (b).....Denver, Col.  
 Van Deman, John N. (c).....Dayton, Ohio.  
 Vander Velde, Emile (\*).....Brussels, Belgium.  
 Vandervoort, J. W. (c).....Parkersburg, W. Va.  
 Vann, C. S. (c).....Edenton, N. C.  
 Van Orsdel, Josiah A. (b).....Cheyenne, Wyo.  
 Van Winkle, W. W. (b).....Parkersburg, W. Va.  
 Varian, Charles S. (b).....Salt Lake City, Utah.  
 Velasco, Emelio (\*).....City of Mexico, Mexico.  
 Venable, Richard M. (b).....Baltimore, Md.  
 Vertrees, J. J. (c).....Nashville, Tenn.  
 Vesey, William J. (c).....Ft. Wayne, Ind.  
 Voight, John F., Jr. (c).....Mattoon, Ill.  
 Von Philippovich, Eugen (\*).....Vienna, Austria.  
 Von Stibral, Adalbert (\*).....Vienna, Austria.  
 Voorhees, J. H. (c).....Sioux Falls, S. D.  
 Vorys, A. (c).....Lancaster, Ohio.  
 Wadhams, Frederick E. (aa).....Albany, N. Y.

Waggener, Balie P. (b)	Atchison, Kan.
Wakeley, E. (f)	Omaha, Neb.
Walker, Richard Wilde (f)	Huntsville, Ala.
Walker, Robert F. (f)	St. Louis, Mo.
Wall, T. B. (f)	Wichita, Kan.
Wallace, William J. (aa)	Albany, N. Y.
Walz, William E. (e)	Bangor, Me.
Wanty, George P. (a)	Grand Rapids, Mich.
Ward, Herbert H. (f)	Wilmington, Del.
Warren, Everett (c)	Scranton, Pa.
Warren, Winslow (d)	Boston, Mass.
Warriner, H. C. (c)	Memphis, Tenn.
Warvelle, George W. (f)	Chicago, Ill.
Washburn, Jed L. (c)	Duluth, Minn.
Waterman, Charles W. (b)	Denver, Col.
Watson, David T. (aa)	Pittsburg, Pa.
Weakley, Samuel D. (c)	Birmingham, Ala.
Weatherly, James (c)	Birmingham, Ala.
Weaver, S. M. (c)	Iowa Falls, Iowa.
Webster, John L. (c)	Omaha, Neb.
Wetmore, Edmund (aa)	New York, N. Y.
Wheeler, Everett P. (aa)	New York, N. Y.
Wheeler, S. S. (c)	Lima, Ohio.
Whitaker, Edward G. (c)	New York, N. Y.
White, Edward D. (aa)	Washington, D. C.
Whitelock, George (b)	Baltimore, Md.
Whitson, Edward (c)	North Yakima, Wash.
Whittier, Clarke Butler (e)	Chicago, Ill.
Wickersham, James (aa)	Eagle, Alaska.
Wigmore, John H. (b)	Chicago, Ill.
Wilcox, Ansley (b)	Buffalo, N. Y.
Wilcox, Elmer A. (e)	Iowa City, Iowa.
Wilfley, L. P. (aa)	Manila, P. I.
Wilgus, Horace (e)	Ann Arbor, Mich.
Willard, Charles (c)	Manila, P. I.
Willett, J. J. (f)	Anniston, Ala.

Williams, E. P. (c).....	Galesburg, Ill.
Williams, Ferdinand (c).....	Cumberland, Md.
Williams, George H. (aa).....	Portland, Ore.
Williams, James (*).....	Oxford, England.
Williams, John Sharp (aa).....	Yazoo, Miss.
Williams, P. L. (f).....	Salt Lake City, Utah.
Williams, Stevenson A. (b).....	Bel Air, Md.
Williams, W. M. (c).....	Boonville, Mo.
Willis, L. C. (c).....	Shelbyville, Ky.
Willson, F. A. (f).....	Bangor, Me.
Williston, Samuel (e).....	Cambridge, Mass.
Wilson, Nathaniel (b).....	Washington, D. C.
Wilson, Thomas (f).....	St. Paul, Minn.
Winkler, Frederick C. (b).....	Milwaukee, Wis.
Winter, Ferdinand (f).....	Indianapolis, Ind.
Wise, W. H. (f).....	Shreveport, La.
Wolverton, Charles E. (a).....	Salem, Ore.
Wood, Benson (c).....	Effingham, Ill.
Wood, Horatio D. (f).....	St. Louis, Mo.
Woodard, Frederick A. (c).....	Wilson, N. C.
Woods, C. A. (a).....	Marion, S. C.
Woods, William W. (b).....	Wallace, Ida.
Woodson, A. M. (c).....	St. Joseph, Mo.
Woolworth, James M. (aa).....	Omaha, Neb.
Worthington, A. S. (aa).....	Washington, D. C.
Wright, Craig L. (f).....	Sioux City, Iowa.
Wright, Luke (aa).....	Manila, P. I.
Wrigley, W. C. (c).....	Raton, N. M.
Young, George B. (c).....	St. Paul, Minn.
Young, Henry E. (f).....	Charleston, S. C.
Zeisler, Sigmund (c).....	Chicago, Ill.

PROCEEDINGS  
OF THE  
SECTION OF LEGAL EDUCATION.

*September 26, 1904, 5 P. M.*

The Section was called to order in Recital Hall, Exposition Grounds, St. Louis, Missouri, on Monday, September 26, 1904, at 5 P. M., by the Chairman, James Barr Ames, Dean of the Harvard Law School, of Cambridge, Massachusetts.

The Chairman :

It is customary as the first business of the meeting to have a committee appointed to nominate officers for the ensuing year. The Chair awaits the pleasure of the meeting.

Henry H. Ingersoll, of Tennessee :

I move the appointment by the Chair of a committee of three for that purpose.

The motion was seconded and adopted, and the Chair appointed as such Committee on Nominations, Henry H. Ingersoll, of Tennessee, George M. Sharp, of Maryland, and James B. Scott, of New York.

The Chairman :

In compliance with the usual custom, the duty devolves upon the Chairman of the Section at this time to deliver an annual address.

*(The Chairman then read the address, which follows these Minutes.)*

The Chairman :

We shall now listen to an address by Professor George W. Kirchwey, of Columbia Law School. Unfortunately Professor Kirchwey is unable to be present in person, as he has telegraphed me that it was impossible for him to come; but he has sent his paper and it will now be read by Professor Scott.

James B. Scott, of New York :

Mr. Chairman and Gentlemen, In the absence of Professor Kirchwey, who was himself to present this paper, I have the pleasure as well as the honor to act as his understudy, and without further comment shall read his lines. The paper is entitled "The Education of the American Lawyer."

*(The paper follows these Minutes.)*

George M. Sharp, of Maryland :

Mr. Chairman, in your address there was a reference made to a suggestion from our Secretary which I think a very admirable one, and I rise to ask that he will put it in the form of a resolution, so that I may move its adoption.

The Chairman :

The Chair will ask the Secretary to take heed to Judge Sharp's suggestion.

Henry H. Ingersoll, of Tennessee :

The Committee on Nominations is ready to report whenever it is in order.

The Chairman :

It is in order now.

Henry H. Ingersoll :

The Committee on Nominations respectfully report, recommending the election of the following officers of the Section for the ensuing year :

For Chairman : Lawrence Maxwell, Jr., of Ohio.

For Secretary : Charles M. Hepburn, of Ohio.

E. W. Huffcut, of New York :

I move that the report be adopted and that the Chairman of the Section be requested to cast one ballot for the election of the gentlemen who have been nominated.

The motion was seconded and adopted and the officers nominated were declared duly elected.

The Chairman :

Discussion of the addresses that have been made is now in order.

Joseph H. Beale, Jr., of Massachusetts :

I am sorry that the meeting of this Section has been fixed at so late an hour as almost absolutely to preclude any discussion, and I feel inclined to propose a resolution for the benefit of the officers of the American Bar Association, to this effect : That in the opinion of this Section the discussion of papers presented is essential to the success of the meeting, and the officers of the American Bar Association are requested in the future not to fix a time for the session of the Section of Legal Education which will prevent the possibility of such discussion.

Henry H. Ingersoll :

I take great pleasure in seconding that resolution. The assignment of only one hour during the annual meeting of the American Bar Association to the proceedings of this Section puts us decidedly into the background.

The resolution was adopted.

George M. Sharp, of Maryland :

I desire to offer the following resolution :

*Resolved*, That it is the opinion of the Section of Legal Education that the officials of this Section shall from year to year prepare and furnish for publication in the annual report of the American Bar Association a report exhibiting as exactly as may be the state of legal education in the United States with respect to each of the following topics, and such other topics as they may think best or may be referred to them by the action of this Section or the Committee of Legal Education :

1. The number of professors and other law instructors in each law school.
2. The number of law teachers in each school who give the whole of their time to the work of the school.
3. The percentage of law students,
  - (a) giving the whole of their time to the school ;
  - (b) combining office and school work.
4. The entrance requirements demanded of candidates for a law degree, and whether students are allowed, while pursuing the course for a law degree, to make up deficiencies in such requirements.

5. The length of the course leading to the law degree, and whether students are allowed to shorten the time of the course by doing two years' work in one year.

6. The prevailing method of teaching and study in each law school, whether by lectures, recitations on treatises, or the discussion of cases in the class room.

7. The number and general character of the books in the law library of each school, and the number and character of books added to the law library in the preceding year, together with the amount paid for law books, and for binding, in the preceding year.

The Chairman :

Gentlemen, you have heard the resolution offered. Is it seconded ?

The resolution was seconded.

Henry H. Ingersoll :

I understand the purpose of that is to devolve upon the Secretary of this Section the work of ascertaining certain facts with regard to the law schools of America. I presume, sir, that it is intended not so much to ascertain what the facts are with regard to those law schools that are members at present of the Association of American Law Schools, but rather to ascertain the status of law schools which are not members of the Association, which includes about one-half the law schools of the country, for if it is meant to go further and get information from those schools that are members of the Association we shall perhaps be trespassing upon the duties and functions of that Association itself. If I am correct in this view, I shall be happy to have our friend, Judge Sharp, give us the meaning of the resolution.

George M. Sharp :

It was the suggestion of our Secretary, made to the Chairman of the Section and referred to by the latter in his address, and I thought it such a good suggestion that I adopted it.

The Chairman :

My idea is that the resolution as framed would seem to apply to all law schools.

Henry H. Ingersoll :

I would suggest that the information sought can be readily obtained from the Secretary of the Association of American Law Schools.

The Chairman :

Is there further discussion of the resolution? If not, the question will be put.

C. C. Cole, of Iowa :

The inquiry seems to be very pertinent whether this resolution is appropriate in this Section or whether it would not be more appropriate in the Association of American Law Schools. As I understand from the reading of it, it would seem to be more appropriate for that Association.

Julian W. Mack, of Illinois :

Perhaps our Secretary can inform us what the purpose of it is.

The Secretary :

The whole purpose of the resolution is to enable us to find where we stand in the matter of legal education. The number of law schools has increased so rapidly that without a statistical table on some of the more important topics it seems impossible to ascertain exactly where we stand in legal education. Now the United States Government does publish every year through its Bureau of Education some statistics as to law schools, but those volumes rarely get into the law offices; they rarely reach the men that we want to reach. Besides, they leave untouched many of the topics which are of essential importance to this question of legal education. It seemed to me that the question went a little beyond the scope of the Association of American Law Schools. Their membership is about one-third of all the law schools in the country. This is simply a general question as to legal education, and it might be a little invidious for the Association of American Law Schools to undertake to publish these statistics. It would be exalting their own schools and disparaging others, possibly.



At any rate, I thought I would bring the matter up, because it struck me as being more appropriate for this section to take charge of this topic, which is a general topic in the field, than for the Association of American Law Schools to take charge of it.

The Chairman :

If there is nothing further to be said, the Chair will put the question.

The resolution was adopted.

Henry H. Ingersoll :

In order that this matter may receive the attention it deserves, will this resolution that we have just adopted be brought before the American Bar Association at its present meeting ?

The Chairman :

It certainly ought to be.

Henry H. Ingersoll :

The remarks of our Secretary are pregnant with meaning to the cause of legal education, and if we are to go outside of the Association of American Law Schools, which has been formed under the ægis of the American Bar Association, then we need the authority and prestige of the American Bar Association. Hence, I ask whether the resolution that we have adopted will be presented to the American Bar Association at the present session for its approval.

The Chairman :

That, of course, depends upon the action of this Section.

Henry H. Ingersoll :

Then, sir, I move that the Chairman of this Section be instructed to present the matter by appropriate resolution to the American Bar Association at its present meeting.

The Chairman :

The Chair does not understand that any action is asked of the American Bar Association.

Henry H. Ingersoll:

But my motion contemplates that the Chairman of this Section should present to the American Bar Association in appropriate form the action that we have taken here on the resolution introduced by Judge Sharp.

Joseph H. Beale, Jr.:

It seems hardly necessary for us to do that in my opinion. Judge Ingersoll probably realizes, as well as I do, that the American Bar Association is not likely to do anything this year; that it has not the time. It certainly hasn't time enough to dispose of its own necessary business, and certainly it would not have any time for new business. That would mean at least the postponement of this matter for another year. Besides, we do not need any sanction from the American Bar Association to this action that we have taken. Our Chairman and Secretary can do what they like in this matter without asking the permission of the American Bar Association, and it seems to me, therefore, that we had better leave the matter where it is.

The Chairman:

Was your motion seconded, Mr. Ingersoll?

Henry H. Ingersoll:

I believe not, sir, and I will not press it.

George M. Sharp:

As there does not seem to be any other business to come before the Section at this meeting, Mr. Chairman, I move that we do now adjourn.

The motion was seconded and carried, and the Section adjourned *sine die*.

CHARLES M. HEPBURN,  
*Secretary.*

## CHAIRMAN'S ADDRESS.

BY

JAMES BARR AMES,

OF HARVARD UNIVERSITY LAW SCHOOL.

Just twenty-five years ago, at the second meeting of the American Bar Association, the standing Committee on Legal Education and Admissions to the Bar made its first report. It seemed to your Chairman that, in preparing the customary address, he could not do better than to review the action of the Association, of the successive Committees on Legal Education, and of our own Section, during the last quarter of a century, pointing out how far the course of legal education has conformed to the recommendations of these bodies and making certain suggestions as to future policy.

The earliest recommendation of the Committee on Legal Education was a resolution in 1879 that "the several state and other local Bar Associations be respectfully requested to recommend and further in their respective states the maintenance of schools of law."<sup>1</sup> After discussion at the meeting of the following year, the American Bar Association adopted this resolution.<sup>2</sup> At that time, 1880, there were forty-three law schools in twenty-four states and the District of Columbia. The students in these schools numbered a little over 3000. At the present time there are one hundred and eight law schools in thirty-five states and the District of Columbia;<sup>3</sup> and the number of students falls a little short of 15,000. In the light of these figures, as was said in the last report of the Committee on Legal Education "the law schools no longer need the fostering care of the Bar as they formerly did." This nearly

<sup>1</sup> 2 A. B. A. R., 235.

<sup>2</sup> 3 A. B. A. R., 44.

<sup>3</sup> There is no law school in Delaware, Idaho, Montana, Nevada, New Hampshire, New Jersey, Rhode Island, Utah, Vermont and Wyoming.

fivefold increase in the number of students in the law schools explains also why we no longer hear any discussion of the question, formerly much debated, whether a lawyer's office or a law school is the better place for the study of law. This question is still open in England, but ultimately will be decided there in the same way as with us, for the hopes, often disappointed, of Lord Westbury, Lord Selborne, Lord Russell and others, for the establishment of a general school of law in London, it would seem, are likely to be realized before another quarter of a century goes by. When the conservatism of the English Bar finally yields, the result will be due in no small measure to the development and success of American law schools.

While the diversion of the law student from the office to the school is altogether gratifying, the same cannot be said of the rapid increase of law schools. Twelve years ago the Committee on Legal Education deprecated the needless multiplication of law schools. It is more emphatically true to-day than it was then, that it would be better for the country if a considerable number of the schools should disappear. Contrast, for example, with the five law schools for New England, four in the city and ten in the State of New York, six in Chicago and ten in Illinois, seven in the District of Columbia and ten in Tennessee. Obviously the sense of proportion is not much regarded in the number and distribution of our law schools.

In 1881 the American Bar Association adopted unanimously the recommendation of the Committee on Legal Education "that the state and other Bar Associations be requested to recommend, and further, in all law schools as soon as practicable, a general and thorough course of instruction under an adequate number of professors, said course to be duly divided for ordinary purposes into studies and exercises of the first year, of the second year and of the third year."<sup>1</sup> At the time of this vote only seven of the forty-three law schools—one in California, two in Massachusetts and four

<sup>1</sup> 4 A. B. A. R., 30.

in the District of Columbia—were three year schools in the sense of demanding the completion of a three year course of study as a requisite for the degree in law. The law schools were slow in responding to this recommendation of the Bar Association. Nine years later, in 1890, there were only twelve three year schools, or about one-fifth of the schools in the country, and in 1895 only seventeen, or fewer than one-fourth. In that year the Section of Legal Education, established in 1893, expressed itself very explicitly in a resolution recommending that “the American Bar Association approves the lengthening of the course of instruction in law schools to a period of three years,”<sup>1</sup> and two years later the Bar Association adopted this resolution.<sup>2</sup> Since 1895 the lengthening of the law school course to three years has proceeded with most gratifying rapidity, so that to-day sixty-five of the one hundred and eight existing schools, a substantial majority, have the three year curriculum.

The geographical distribution of the three year, two year and one year law schools is noteworthy. Of the sixty-five three year schools only two are in that part of the country which lies south of the latitude of Washington and east of the Mississippi River, and those two are colored schools, with a total registration, the one of six and the other of three students. Within these same limits are all the one year schools, now fortunately only three. Formerly there were several others, but these have either become two year schools or, in a few cases, have ceased to exist. These recent extensions of the course from one to two years encourage the belief that a considerable number of the two year schools, indeed, all the truly effective ones, will see their way soon to introduce the three year curriculum and so range themselves with the majority of the schools of the country. After 1905 membership in the Association of American Law Schools will be restricted to schools which require the completion by candidates for the

<sup>1</sup> 18 A. B. A. R., 406–408.

<sup>2</sup> 20 A. B. A. R., 31–33.

degree of the full three year course. It would be greatly to be deplored if eight Southern states, because of non-compliance with this requirement, should not be represented in the Association.

A serious obstacle to the effectiveness of law schools was, and still is, in many cases the inadequate preliminary education of a considerable proportion of their students. Twenty-five years ago an examination or a certificate of graduation from a high school as a condition of admission to a law school was almost unknown. In the first thirteen reports of the American Bar Association there is no recommendation or discussion of the proper qualifications for admission to law schools. The subject was mentioned for the first time in 1891, the Committee on Legal Education of that year expressing the opinion that "admission to the school should not be restricted to the graduates of colleges, as has sometimes been proposed, but should be open to all who have a good English education,"<sup>1</sup> or, as they say in another part of the report, "to all who have sufficient education and intelligence to go through their course without delaying or embarrassing their fellow students."<sup>2</sup> This opinion was, obviously, not so much a recommendation of a general raising of the low standard of admission then prevalent as it was a warning against the introduction in particular schools of too high a standard. Moreover, the standard of a good English education was too vague and elastic to be of much value. But in 1896 the Section of Legal Education made a determined effort to improve the preliminary education of law students by unanimously recommending the adoption by the American Bar Association of the following resolution: "That the American Bar Association is of the opinion that before a student commences the study of law it is desirable that he should have received a general education approximately equivalent to a high school course, and that persons who have not completed the equivalent of such a course should

<sup>1</sup> 14 A. B. A. R., 331.

<sup>2</sup> 14 A. B. A. R., 331.

not be admitted into law schools as candidates for a degree.”<sup>1</sup> The following year the American Bar Association unanimously adopted this resolution, which came to it with the endorsement of the Committee on Legal Education;<sup>2</sup> but, not wishing to admit that a high school education was all that was desirable, strengthened the resolution by declaring that the entrance requirement should be *at least* the equivalent of a high school course.<sup>3</sup> In 1900 the Association of American Law Schools restricted membership in the Association to schools requiring the completion of the equivalent of a high school course as a condition of admission to candidacy for a degree.

At the time of this action of the Section of Legal Education, 1896, only seven out of seventy-four schools, *i. e.*, fewer than one-tenth, required as much as the completion of a high school course for admission to the school. In 1904 there are fifty-one such schools, *i. e.*, nearly one-half of all the schools. Truly the reform in the matter of preliminary education has proceeded rapidly in the last eight years. But much remains to be done, so long as one-fourth of the law schools require an entrance examination representing considerably less than a high school course, and another fourth requires no examination at all for admission. Here again one is impressed by the geographical distribution of these three classes of schools. Of the schools requiring for admission to candidacy for a degree at least a high school education only one, the University of Virginia Law School, is in the territory south of the latitude of Washington and east of the Mississippi River; and in that same territory we find a majority of the schools requiring no entrance examination. Now that the University of Virginia has led the way, the other Southern schools may be expected to follow her good example.

As might be supposed, the reform in the requirements for admission, and the reform in the lengthening of the curriculum

<sup>1</sup> 19 A. B. A. R., 450-461.

<sup>2</sup> 20 A. B. A. R., 351.

<sup>3</sup> 20 A. B. A. R., 33, 34.

for the degree have gone along together. Of the fifty-one schools requiring at least a high school certificate for admission to candidacy for a degree, all but four are three year schools.

As already mentioned, the American Bar Association so framed its resolution as to imply a wish that the law schools might find it possible to demand of candidates for a degree more than a high school education. Influenced by a similar desire, the Committee on Legal Education, at the last meeting of the Association, expressed the hope that, so far as practicable, the schools should require of their students a preliminary education equivalent to the completion of two years of a college course.<sup>1</sup> At the present time four schools admit only college graduates as candidates for a degree, and three demand an education somewhat higher than that of a high school but lower than that of a college. In view of the rapid advance in the last ten years, it seems reasonable to believe that at no distant day we shall have several schools, perhaps six or eight, composed almost exclusively of college graduates, a fair number whose students will have completed two years of college work, a majority requiring the equivalent of a high school education, and a small and steadily diminishing number satisfied with less than a high school education.

Before leaving this topic, permit me, since a question of general policy is involved, to correct the common, but erroneous, impression that the doors of the law school at Cambridge are closed to all but college graduates. Only holders of a college degree, it is true, are admitted as regular students. But other persons are admitted as special students upon complying with certain conditions. If a young man has been prevented by straitened circumstances or other misfortune from getting a college education, and if he is a man of more than average ability and passes with credit an examination in Latin, French and Blackstone, he may have, as a special student, all the privileges of the school in the way of instruction, and, if he ranks upon the full three year course in the first quarter of

<sup>1</sup> 26 A. B. A. R., 423, 427.



the class, will receive the degree of LL. B. The future Abraham Lincolns and Daniel Websters ought not to be excluded from any law school for want of a college degree. But one who has neither a college degree nor unusual ability should not be permitted to defeat the attempt of any school to raise the grade of its students.

The influence of the American Bar Association in improving the quality of the product of the law schools is well matched by its success in advancing the qualifications for admission to the Bar. Twenty-five years ago these qualifications, whether as to the time of legal study or extent of legal acquirements, or as to preliminary general education, were deplorably low. In twenty-three of the thirty-eight then existing states there was no prescribed time of study. In only two of the states<sup>1</sup> were the Bar examinations uniform throughout the state; in only three<sup>2</sup> and the District of Columbia were the Bar examinations in writing, and in only two<sup>3</sup> were there any requirements as to preliminary education.

In 1880 the American Bar Association requested the Committee on Legal Education to ascertain and report the qualifications for admission to the Bar in the different states with such suggestions as might occur to them.<sup>4</sup> The committee reported accordingly, but did not suggest a fixed time of study, uniform Bar examinations or a preliminary education as requisites for admission to the Bar. In the following eight years the American Bar Association manifested no interest in the subjects of legal education and admission to the Bar, the successive Committees on Legal Education not even making a report.

The committees of 1890 and 1891, composed of William G. Hammond, George M. Sharp, Henry Wade Rogers and George O. Shattuck, made elaborate reports upon the whole field of legal education, and, as to admission to the Bar, made the fol-

<sup>1</sup> New Hampshire and New Jersey.

<sup>2</sup> Nevada, New Hampshire and Oregon.

<sup>3</sup> Delaware and Pennsylvania.

<sup>4</sup> 3 A. B. A. R., 45.

lowing specific recommendations: (1) That at least two years of study should be required of every student before he presents himself for examination. (2) That the power of admitting members to the Bar be in each state lodged in the highest courts of the state, and that the examinations of candidates be referred to a permanent commission, appointed by the court.<sup>1</sup> These resolutions were adopted by the American Bar Association in 1892.<sup>2</sup> A proposed amendment, making the time of legal study at least three years instead of two, was lost.<sup>3</sup> But five years later, in 1897, the American Bar Association adopted a resolution, recommended by the Section of Legal Education in 1895, and expressing the hope that as soon as practicable a rule might be adopted in each state which will require candidates for admission to the Bar to study law for three years before applying for admission.<sup>4</sup>

The action of the states in recent years discloses a strong tendency to advance the qualifications for admission to practice along the lines approved by the American Bar Association. At the present time a three years term of legal study is prescribed in nineteen states as against seven in 1879, and the proportion of states prescribing no term of study has dropped from nearly two-thirds to little more than one-third. The number of states requiring a preliminary education has risen from two to fifteen. The number having uniform examinations throughout the state has risen from five to thirty-five, twenty-five of which have permanent State Boards of Bar Examiners. And the Bar examinations are in writing in thirty-six states instead of five, as in 1879.

But our Section and the Committee on Legal Education have helped to improve the quality of law schools and to advance the qualifications for admission to the Bar not only by direct recommendations, but also, indirectly, by bringing about the Association of American Law Schools and the Con-

<sup>1</sup> 14 A. B. A. R., 349.

<sup>2</sup> 15 A. B. A. R., 20

<sup>3</sup> 15 A. B. A. R., 19.

<sup>4</sup> 20 A. B. A. R., 31-33.

ference of State Boards of Bar Examiners, each of which met for the first time in 1900. The wholesome influence of these associations will not be limited to the schools and states represented. The Association of American Law Schools already has hastened the introduction into certain schools of the three year course and the requirement of a high school education for admission. This Association affords the best possible opportunity for the discussion of methods of studying and teaching law. There have been such discussions in our Section and in the reports of the Committee on Legal Education. But, wisely, as I think, no recommendation of any particular method has been made. It is well that law professors should explain to each other their methods and give their reasons for preferring one method to another. It is well also to know to what extent different methods are used. It is a fact of some significance, for example, that the study of law by the discussion of cases in the class room, which twenty-five years ago was confined to one school, and which in more than one-half of all the schools in the country still finds no favor, is now the chief method of study in a majority of the schools in the Association of American Law Schools. But it would be a mistake to attempt by any vote to commit the Association to the expression of a preference for the case method. The benefit to the law professor of knowing what is taking place in other schools is so great that I wish to express my concurrence with a suggestion made to me by our Secretary, and which I hope he will put into the form of a motion at this meeting, namely, that the Section of Legal Education should publish annually with its reports a statement indicating, as to each school, the prevailing method of teaching and studying, the number of teachers giving substantially their whole time to the school, the growth of the library, the number of teachers, students and the like.

Besides the specific reforms already considered there are three others much to be desired. The abolition of the practice, which obtains in some states, of admitting to the Bar on a law school diploma, the abandonment of the attempt by the

student to combine office work with the work of the school and the adoption of the principle that at least a majority of the teaching staff should be men who give substantially all their time to the school.

At a time when law schools needed fostering there was a plausible excuse for making the school's diploma a card of admission to practice. But at the present time to say of a school that it needs this factitious inducement to attendance is to impeach the quality of the school. In truth it is a detriment to a school if its diploma admits to practice in a given state. Such a school tends inevitably to become a local school rather than a national school, and the value of its degree is correspondingly reduced, for a degree meaning that its holder is trained in the law of Georgia or of Minnesota is not the equivalent of a degree indicating that its holder is trained in Anglo-American law. The Committee on Legal Education and the Association of American Law Schools declared their opinion, in 1901, that the law school diploma should not admit to practice,<sup>1</sup> and in several states the law school graduate is no longer exempt from the Bar examination. But in fifteen states the diploma is still a ticket of admission to the Bar. It is to be hoped that these states will follow the example of the University of Pennsylvania Law School, which petitioned that its diploma might no longer be received as a substitute for the Bar examination.

The principle of the undivided allegiance of the student and of the professor to the work of the school was advocated so clearly and so convincingly by Professor Wigmore<sup>2</sup> and the late Professor Thayer<sup>3</sup> that I will not venture to repeat their arguments. Experience confirms the soundness of their reasoning, and there is a growing disposition in the law schools to recognize and act upon the principle that the student should complete his law school work before taking up the work of the

<sup>1</sup> 24 A. B. A. R., 407, 582.

<sup>2</sup> 17 A. B. A. R., 456.

<sup>3</sup> 18 A. B. A. R., 426.

office, and that, as a rule, the calling of the teacher and practitioner should not be combined in the same individual. If some committee of this Section should ascertain and report to what extent the students and professors in the different schools devote themselves exclusively to the work of the school, sending copies of its report to the members of the Section and also to members of the Association of Law Schools in advance of the annual meeting, these bodies would be in a position to discuss this important matter, and if they should unite in approval of Professor Wigmore's and Professor Thayer's conclusions, their action could not fail to accelerate the adoption of those conclusions by the law schools.

This review of the last twenty-five years exhibits a progress in legal education that the most sanguine would not have predicted in 1879. We have seen also that this Section and the Committee on Legal Education have been a potent influence in this progress. The rapidity of the advance in the last ten years is especially satisfactory, for it justifies the belief that the states and schools which have not yet caught the spirit of reform must soon yield to its influence.

# THE EDUCATION OF THE AMERICAN LAWYER.

BY

GEORGE W. KIRCHWEY,  
DEAN OF COLUMBIA LAW SCHOOL.

I am not unconscious of the formidable vagueness and generality of my title. Selected for another occasion—your Chairman's address of last year—to which a certain amplitude of plan seemed appropriate, it fits but loosely on the shrunken proportions of an ordinary "paper," whose modest function it is to introduce a topic of moderate range for criticism and discussion. It has seemed best, however, to retain the original title of the paper, leaving its actual scope to be limited and defined by an explicit declaration of intention. Let me, then, without further parley, relieve your apprehensions by saying that I do not propose to dwell either on the history or on the present state of legal education in America. So far as these topics are touched upon at all, it will be only incidentally, by way of reproof, of correction, of instruction in righteousness. The theme to which I will address myself is the education which present and impending conditions of American life exact as a preparation for the service which the lawyer is called upon to perform; or, to put it more simply and in interrogative form, What education should the American lawyer receive?

It is a matter of common observation that the lawyer has largely lost the social and intellectual pre-eminence which was generally conceded to him in the period preceding the Civil War, and the fact is commonly taken to indicate the decay or deterioration of the profession. That explanation will be repudiated as soon as it is offered in such a gathering as this. We, at least, know that the Bar was never better trained, that it was never better manned, that it was never more efficient,

in our country at least, than it is to-day. What, then, is the explanation of the phenomenon of the lower station occupied by the lawyer in American life? Is it that in the simpler conditions of our earlier history his learning and usefulness to the community were unduly exalted and a position of leadership conceded to him to which he was not fairly entitled, and that the social and industrial transformation of the last generation has only shaken him down into his proper station by the side of the doctor, the editor and the engineer? This were a hard saying and will not be accepted without question by the serious student of our social life. It cannot be admitted that the profession in that earlier period of our national life was exalted beyond its just deserts and that it is now suffering the reaction from such overestimation. The lawyers were then, as they are to-day, the natural leaders of the community in all secular, as the minister in religious, affairs. They it was who guided the destinies of the infant republic and in their several communities shaped and directed the public spirit of the people.

The decay of religious faith and the prevailing loss of interest in spiritual affairs will indeed account for the dethronement of the minister of religion from his pre-eminence. But there has been no corresponding decay in the *legal* sentiment of the American people. Indeed, the administration of justice has in a way taken the place of religion as our chief concern. Never was the law more revered, never has there been more interest in the courts and their proceedings, never a higher regard for the judicial office than prevails among us to-day. Obviously we must look elsewhere than here for the transformation of social values of which the lawyer has been the victim. Something, indeed, of his loss of prestige may be due to the growing importance of wealth and of industrial leadership in American life; something to the congestion of population in cities, rendering it increasingly difficult for the individual to gain the recognition to which his ability and services entitle him; something, perhaps, to the rise of a new type of political

leadership, based on sympathy and a knowledge of human nature, and too often at war with the administration of justice. But these considerations touch only the fringe of the question. It is not essential to the lawyer's eminence that there shall be no other eminence. In a boundless universe there may be boundless better and boundless worse without affecting the status of a given order of excellence. Here as elsewhere—I had almost said as *everywhere*—society proportions its rewards to the service rendered: for high service high honor, for common service common rewards.

I do not think it too much to say that the lawyer has abdicated his high function of leadership in secular affairs. He has failed to keep pace with the revolution which has transformed our American life. In the face of an extraordinary complication of social and industrial conditions and of an enormous expansion of the law, he has been too long content with the old ideals of preparation for his professional service. He has been too slow in realizing that the new era calls for new knowledge, a finer discipline of the faculties, a more conscious and enlightened public spirit.

Dr. William Samuel Johnson, first United States senator from Connecticut and first president of Columbia College after its reorganization in 1787, has left an interesting and curious record of the state of the law and of the preparation for the Bar in the period immediately preceding the Revolution. In a letter addressed to his friend, William Smith, the historian, of New York, when the writer was still immersed in his legal studies, he thus comments on the jurisprudence of his native state:

“The practice of law,” he says, “must be infinitely easier in New York than here. In our pleadings and arguments, our practicers are obliged to rely upon their own imagination and draw from their own stock, oftentimes a most miserable resource. There,” he continues, “industry, application and a good collection of books in general does the business; here, a teeming, fruitful imagination will make the best figure.”



Probably, with some qualification for the larger centers of population, this would not have been a fanciful description of the state of legal learning and of the administration of justice in all of the colonies at the period when Samuel Adams in Massachusetts and Alexander Hamilton in New York and Patrick Henry in Virginia were rising to leadership at the Bar. Obviously, there must be a science of law before a system of legal education could appear, and it is not to be wondered at that the young aspirant to legal honors had to make his way without reports, without text books, without instruction or guidance of any sort. It is true that young Johnson, being an academically minded youth, was not content to arrive at the law solely by the process of forensic disputation, and so he made a horseback journey from Stratford to New York and there purchased a set of Viner's Abridgement in nineteen folio volumes and pondered these and made himself a master of the law.

It would be profitable, but the time is lacking, to describe the long process of emancipation from the primitive conditions described by Dr. Johnson. Slowly order emerges from chaos, our legal systems become articulated and clothed on with flesh and blood, and still more slowly some notions of an education for the Bar begin to permeate the legal society of the time. Law schools appear—first that of Litchfield, Connecticut, then the Harvard school, then that of Yale—which, however crude their material and defective their methods, did yet after a fashion prepare their students for the serious apprenticeship which was their real preparation for the Bar.

First the seed, then the ear; now the full corn in the ear. The conditions under which Viner's Abridgement and the Litchfield school served as the gates to the legal temple are, intellectually and professionally, as remote from the conditions for which our young men are preparing as is the world of Ptolemy from the world of to-day. The American lawyer is face to face with more than two score kindred legal systems in every stage of development, some of them almost as crude as the

legal system of Connecticut a century ago, others rivaling in completeness and in subtlety the system of imperial Rome. He finds himself in manifold contact with a multifarious industrial and social life, which for vastness and complexity has not had its like in history. He is at the center of an intricate and highly organized political system which demands of him every kind of service. The material science which is recreating the world and remaking man in its own image imposes on him tasks which stagger the imagination. He must be a "wizard of science," a "captain of industry," a statesman, a jurist, and, by those tokens of high service, a leader of public opinion in the community to which he ministers.

I have failed of my purpose if I have not half proved my case before stating it. Briefly, it is this: that the times call for a more highly trained, a better equipped Bar than our present educational methods furnish; that they demand that the lawyer shall be a man of disciplined and cultivated mind with a sound knowledge of economic and social conditions and of the history of institutions; that he shall be so trained in the method and spirit of legal science that the law shall present itself to him as an organized system of human experience, slowly unfolding to meet the demands of an enlarging conception of justice and of a more perfect adjustment to the changing conditions of social and industrial life.

Translated into the language of common life this means

*First*, that the lawyer must have the general education roughly represented by a completed college course;

*Second*, that he must have devoted at least three years exclusively to the scientific study of law in an organized law school under competent instruction; and

*Third*, that this legal education shall be conceived in a broad and academic spirit so as to include some acquaintance with general jurisprudence and legal theory, and an adequate knowledge of the civil law.

If the foregoing propositions had been introduced by the word of aspiration, "should," instead of "must" and "shall,"

they would doubtless receive general support at your hands. But when I declare that I would exclude from the Bar all who have not been trained in liberal studies, that I would shut the doors of the profession upon that favorite of our official Bar Examiners, the law clerk, and that I would make a knowledge of the civil law a condition of admission to the Bar, I may fail to strike a responsive chord in some breast which refused to be appalled by the glittering generalities in which I have previously veiled my meaning.

Do not misunderstand me. I am under no illusions as to the value of the training too often represented by the A. B. degree. Nor am I much concerned over the result of the long drawn out controversy regarding the length of the college course. Whether the law student shall have passed through a three or a four years' college course, or shall have been trained in the sublimated secondary school of President Eliot's aspirations, is a matter of small moment. That he shall, besides the various knowledges which go into the equipment of the educated man, have the trained mind and the habit of looking before and after, which the American college at its best imparts, together with a certain maturity of judgment and feeling which come only with the years and generally only with years of serious application, is, to my mind, the important thing. That a boy of seventeen or eighteen, fresh from the high school, does not and cannot usually have this capacity seems to me too plain for argument. I have been more puzzled than edified by arguments, with which some previous meetings of this Section have rung, over the question of the teaching of elementary law in our law schools. In the twenty years in which as student, practitioner and teacher I have been concerned with the law I have never yet come upon that enchanted ground within its wide-flung boundaries which could be marked off as "elementary." There are no simple, uncomplicated and, therefore, easy studies in the law. They are all alike rooted centuries deep in the history of humanity and nourished by its varied experience. From the day of his entrance upon

the study of law the student is plunged into the most intricate problems with which the human mind is practically called upon to deal. It is man's work and shall we call our boys from their play to engage in it?

And if the study of the law be, indeed, man's work—work, that is to say, calling for serious purpose and the best energies of faculties matured by study and reflection—does there survive among us anyone who will defend the present system of admitting to the Bar the undisciplined rout of the law offices? We are all, in this Section, committed to the view that the training of the law school is infinitely better than that of the office. Will you not go one step further and hold, with me, that it is indispensable, that no other experience, except, perhaps, in rare cases, that of the law teacher, gives the same grasp, at once comprehensive and minute, of legal principles? Surely no one in this presence believes that the official examination, either as now conducted or as it is likely in the future to be conducted, furnishes an adequate test of the *quality* of the candidate's legal preparation. Indeed, I venture to assert that the Bar examination stands condemned, not only by the grotesque results, both of success and failure, too often attained under the best of the State Boards, but even more by the very fact that the desultory reading and unorganized office experience of the law clerk should, in any but the rarest cases, enable him to pass the examination. I do not question the right nor, indeed, the duty of the state to test, by examination or otherwise, the fitness of candidates for the Bar, and it may well be that it will, in time to come, as is now the case in Germany, require of the candidate some measure of practical experience in the administration of justice in addition to his academic training in the law. But the work of the law school should always precede such practical experience and should be an indispensable prerequisite to any such state examination.

There will be some who, having gone with me thus far, will hesitate to accept the view that a proper training for the Amer-

ican Bar calls for instruction in foreign law. Let us no longer deceive ourselves. We are not the appointed guardians of an exclusive revelation. That divine harmony whose seat is the bosom of God and whose voice the music of the world was not committed to us alone. Doubtless there was a time when the English common law stood as the only bulwark of personal liberty against the rising tide of absolutism and when even that most awkward instrument of justice, the petit jury, justly earned the title of the palladium of English liberty, and in that day even a blind and unreasoning faith in the perfection of the common law was justified by the supreme necessity of preserving it intact. Even we may rejoice in the jealous care by which it was protected from the swelling tide of the civil law without and the insidious encroachments of the ecclesiastical law within. But what English or American lawyer to-day believes that the common law system is the perfection of human reason which Lord Coke found it to be or believes that it could derive no improvement, but only contamination and injury, from the legal experience of the continent.

The world in these latter days is assuming again the spaciousness and grandeur of the Roman world. Gone is the parochial England of Littleton, of Coke, of Blackstone; gone, never to return, is the primitive America of Shaw and Marshall and Story. It is a trite, but none the less a true, saying that human nature is much the same the world over, and the adjustment of social man to his ever-changing environment presents the same problems in Paris, in Berlin, in London and in New York. Especially is this true in our day when science has obliterated the barriers of nations and the same industrial conditions have made men and their lives and their problems everywhere the same.

In any other department of life, in the arts of war as well as of peace, we range the earth to gather the experience of other nations. We send trained observers to follow the fortunes of contending armies on the other side of the world. Our engineers study with keenest interest the engineering monu-

ments of the old world. We institute pilgrimages to study the educational systems of rival nations. Our medical students are in all the hospitals of Europe from St. Petersburg to Geneva. Our commercial agents are found in the counting rooms of Shanghai and Buenos Ayres. Is it only in the wide and deep concerns of the law that we have nothing to learn from "abroad"? To me, at least, it is evident that the day of isolated legal development has passed away for us; that the interests of justice call for a widening of our conception of law to include the entire legal experience of our race and civilization, and that the American lawyer must no longer be satisfied to draw his inspiration from Westminster Hall alone, but must be prepared to draw from every fountain of juristic wisdom which springs from a kindred source. Thus believing, I am forced to condemn as partial and inadequate a legal education which does not include a study of the civil law; and I look forward with confidence to the time when no American lawyer shall be deemed to have mastered his own legal system who has not equipped himself with a knowledge of the great system of law which imposed itself upon the other half of the world.

Doubtless to some here present these propositions will seem counsels of perfection, desirable, perhaps, but wholly unattainable under the conditions of American life. To others, I fear, the programme will present itself as a fantastic dream, not only incapable of realization in a workaday world, but picturing forth an ideal of professional training out of all proportion to the service which it is the function of the Bar to render. And there may be a few who take what may be described as the political view of the plan, that the state has no right to restrict the opportunities of the legal profession to a select class who may be able to avail themselves of the formidable educational process described.

The first class of objectors need only be reminded that we live in an age when counsels of perfection are transmuted as by magic into the sober maxims of experience. Who would

have believed a score of years ago that the dawn of the twentieth century would find half the aspirants to the Bar in the law schools of the land? Who, a dozen years ago, could have credited a prediction that the law schools would double and their students treble in number in little more than a decade; or that the surest bid for popular success which a great law school could offer would be to require a college degree as a condition of admission; or (*mirabile dictu*) that this season of grace would witness a conference of the official law examiners of the United States to devise means for raising the standard of admission to the Bar throughout the country? These unpremeditated achievements of the last few years are an earnest of what, with high purpose and firm resolve, we may hope to accomplish in the years that lie immediately before us.

I have already, by anticipation, dealt in a measure with the objections of those, if any there be, who believe that the Bar is now adequately fulfilling its purpose and who see no need of new standards of training or new ideals of service. To such I would further say, look out upon this vast, teeming life of our time and picture the role which the lawyer might play in it if he should regain the eminence from which he has fallen. Consider the crying need of leadership in every department of life, the demand for reform in social, industrial and political organization, the pressing call of our expanding jurisprudence for wise direction. It may, indeed, be urged that our present system of training produces by a species of natural selection men of just the type required to render the high and varied service here demanded; that the programme outlined by me contemplates the production of a race of "jurists," not of lawyers, and that it leaves no place for the common man seeking to do the common work of the profession. Ignoring the hint of opprobrium involved in this use of the term "jurist," may I ask my objecting brother what the common lawyer's work is that can thus be set apart from that of the jurist? To what legal task will you set the man whose mind has not been trained and broadened by liberal studies and whose legal edu-

cation is of the archaic type? What order of cases is there which calls for inferior training and ignorance of the law to conduct? Is the best trained lawyer too fine an instrument for the promotion of justice in small cases? Is the work of the country lawyer inferior in dignity and intrinsic importance to that of his urban brother? Or will you have a hierarchy of legal talent with the well-trained corporation lawyer at the top and the self-made bill collector at the bottom of the ladder?

The answer to all this is obvious. Under the conditions of our American life and with the present organization of the legal profession every lawyer, not the exceptional man only, is called upon to play the role of leader, of reformer, of jurist. The part which the lawyers performed, to the admiration of Burke and the disgust of General Gage, in the Revolution is still theirs to perform. It is no accident that has thrown the business of legislation and of public administration into the hands of our profession. The lawyer's official relations to the great business of the administration of justice force him, for better or worse, into the position of a leader of the community in which he practices his profession.

Furthermore, whether he pursues the aim consciously or not, the lawyer is, by the nature of his high calling, the chief instrument in the development of the legal system in which he practices. It is a narrow view of the process of legal expansion which restricts it to the deliberate efforts of the bench and the legislature. That great function is the prerogative of the entire Bar, of the humblest lawyer, seeking to enforce his view of what justice and the law require in a given case, as well as of the "jurist" on the bench. When the reporter, voicing the sentiment of his legal brethren, appends the fatal *sed quaere* to his report of a case, he is as truly engaged in making (or, shall I say, declaring) the law as is the judge whose opinion he has discredited, and when the court has rendered its judgment in a cause, leaving "some of the Bar of a different opinion," is any lawyer surprised to find the contrary opinion of the Bar embodied in the law as finally declared?



It will not have escaped your notice that in arguing for the equal education of the Bar I have taken the legal profession as it exists in this country to-day, with no differentiation of functions, no unequal distribution of privileges, such as exists in England, for example. Of course such a distribution of opportunities and of functions is conceivable for this country also, and if the programme which I have ventured to submit shall go into effect is not unlikely to arise. There might well be an order of law clerks (attorneys, solicitors, call them what you will) not admitted to all the rights and privileges attaching to full membership in the Bar, to whom matters of tithe of cummin shall be referred, leaving the weightier matters of the law to be dealt with by the Bar proper. If it be argued that the present requirements for admission to the Bar will be an adequate test of the capacity of law clerks to perform their more modest function, I shall not quarrel with the assertion.

I have left myself no time to deal adequately with the final objection, that the effect of the proposed change would be the creation of a professional caste, a legal aristocracy, from which men of limited opportunities would necessarily be excluded. Shall I confess that I should not have deemed the argument worthy of serious consideration had it not of late been officially promulgated and reiterated in the highest educational circles? It is not, of course, intended to be taken literally. No intelligent man is in favor of removing all restrictions on admission to the Bar and throwing wide the gates to all who may choose to enter. But if the wisdom and propriety of restricting membership in the Bar to such as are fit for its service be once admitted, then the question of the standard to be maintained becomes one of practical expediency. In other words, the question is not one of personal right, but of public safety and utility. If, then, the state is to create an aristocracy in any event, shall it not see to it that it is an aristocracy fit for the noble uses which it is designed to serve? So long as the pursuit of the law is regarded only or mainly as a means of

livelihood, or even if looked at merely as a learned profession, followed for its own ends, such regulation might be deemed to savor of injustice. To us the Bar presents itself as one of the chief organs of justice and justice as the highest concern of the state. How, then, can it be deemed improper for the state to prescribe whatever tests are requisite to ensure the proper performance of the delicate and important duties of this office?

Will it be an impertinence to warn you at this point against a common fallacy? That what was good enough for Agamemnon is good enough for me is an indisputable proposition, if the times are Homeric and I an Agamemnon. But alter the conditions of the heroic life and it may be that a Lee, a Kitchener, a Kuroki will fit better into the scheme of things than the most godlike hero of an elder time. And if your problem is to create heroes out of common clay, will you not send the mass to St. Cyr or West Point to be moulded into the form and semblance of the heroic? It may be that the Adamses and the Marshalls and Livingstons shall make their own law, on the principle enunciated by Richard Grant White that "the man who has ideas to express may make his own grammar," and that a Hamilton, a Patrick Henry, a Lincoln, coming with the radiance of genius upon his brow, shall take the Bar by storm. I do not dispute these propositions, though they do not strike me as being of the self-evident order, but surely our experience as lawyers and legal educators has not satisfied us that we are largely concerned with conditions and personalities of this kind. It is indeed to be desired that our educational systems shall be so flexible and so wisely administered that we shall be capable of standing aside and letting genius have its way. But an educational system which should assume the genius as its material and his development as its aim would be as grotesque in its way as one which should treat all students as delinquents and defectives. We must continue, as heretofore, to legislate for the common man and to make it our chief concern to fit him for his task, leaving the exceptional man, for better or for worse, to the tender mercies of society.

This is, after all, the important question by which all institutions are finally tested—do they or do they not contribute in the measure of their capacity to the well-being of the state? It is in order that the Bar, with its splendid capacity for the highest service, may not fall short of its calling that I make this appeal. That justice may be more wisely and swiftly administered; that our system of law may be more perfectly adapted to the growing needs of society; that the state may have the trained service which its mighty affairs require; that this democratic society of ours, with its infinite capacity for good and evil, may have wiser and more capable leadership under the inspiration of higher ideals—for all of these reasons I appeal for a new conception of training for the Bar.

PROCEEDINGS  
OF THE  
SECTION OF PATENT, TRADE-MARK AND  
COPYRIGHT LAW.

*St. Louis, Missouri, September 27, 1904.*

The annual meeting of the Section was held in the committee room of Festival Hall of the Louisiana Purchase Exposition.

On motion of Melville Church, of the District of Columbia, duly seconded, Robert S. Taylor, of Indiana, was made Chairman *pro tempore*.

The Secretary announced that, because of a disabling accident sustained by the Chairman of the Section, Edmund Wetmore, the latter was unable to attend the meeting and had requested the Secretary to read for him, in lieu of a formal annual address, a paper entitled, "Some Suggestions as to Reform in Practice and Procedure in Patent Cases in the Federal Courts," which was done.

*(See the Paper at end of these Minutes.)*

On motion of Joseph R. Edson, of Washington, District of Columbia, duly seconded, the minutes of the last previous annual meeting were amended so as to make it appear therein that at said meeting the following resolution was offered by him, viz. :

*Resolved.* That it is the sense of the Patent Section of the American Bar Association that a general law should be enacted by Congress which shall provide for the extension of letters patent, in proper cases, beyond the term of the original grant ; therefore, it is

*Resolved,* That the Standing Committee on Patent, Trade-Mark and Copyright Law be, and they are hereby, requested to frame a bill containing provisions as above indicated and

report such bill to the next meeting of the Association, having previously complied with the requirements of the by-laws of the Association as to printing and distribution of the committee's report before the meeting.

And that action on such resolution was deferred.

The Chairman announced that Mr. Edson's resolution might be considered as still before the Section, whereupon, on motion of Arthur P. Greeley, of the District of Columbia, seconded by J. Nota McGill, of the District of Columbia, the resolution was laid upon the table.

A committee, consisting of Arthur P. Greeley and J. Nota McGill appointed by the Chairman to draw and present suitable resolutions respecting the death of Francis Forbes, a former member of the Section, reported the following resolutions, which were unanimously adopted:

*Resolved*, That the members of the Patent Section of the American Bar Association have received with great sorrow and regret the announcement of the death of Mr. Francis Forbes, of New York, long a valued member of the Association and of the Section.

*Resolved*, That the Patent Section mourns the loss of Mr. Forbes and desires to express here the high esteem in which he has been held by the members as a lawyer of unusual attainments and ability, and as a gentleman of unfailing courtesy and untiring devotion to the interests of the Association and the Section.

*Resolved*, That these resolutions be spread upon the minutes of this Section.

William W. Dodge, of the District of Columbia, read a paper entitled, "A Review of Legislation Proposed at the Latest Session of Congress Pertinent to Patents and Trade-Marks."

*(See the Paper at end of these Minutes.)*

This was followed by a discussion of the measures now before Congress looking to the establishment of a Court of Patent Appeals and to the improvement of the law of trade-marks in which Robert S. Taylor, of Indiana; Thomas J.

Morris, of Maryland; J. Nota McGill, Arthur P. Greeley and Melville Church, of the District of Columbia, participated. A communication from Thomas J. Johnston, of New York, relative to the Court of Patent Appeals bills was also read by the Secretary.

Robert S. Taylor, of Indiana, was duly nominated and elected Chairman and Melville Church, of the District of Columbia, was duly nominated and elected Secretary of the Section for the ensuing year.

The Section then adjourned *sine die*.

MELVILLE CHURCH,  
*Secretary.*

# SOME SUGGESTIONS AS TO REFORM IN THE PRACTICE AND PROCEDURE IN PATENT CASES IN THE FEDERAL COURTS.

BY

EDMUND WETMORE,  
OF NEW YORK, NEW YORK.

One of the most useful objects of the American Bar Association is to improve the administration of the law wherever the need of improvement is most conspicuous. In our branch of law, that relating to patents, our efforts at improvement have been, in some cases, attended with a measure of success, and, in other cases, notably in those in which we have greatly dared, we have found that our praiseworthy zeal has exceeded our means of accomplishment. Speaking in the light of experience gained in our former efforts, I propose to offer a few general observations upon methods of reform by which it is sought to improve the practice and procedure in the trial of patent causes in the federal courts.

There are but two sources from which desired changes can originate, namely: congressional legislation or rules of court. The obtaining of an act of Congress relating to any branch of our patent laws is beset with much difficulty and attended with considerable danger. The first difficulty is to obtain anything approaching unanimity on the part of those engaged in the practice of patent law in support of any proposed measure. One of the great benefits of our Association is that by discussion and an exchange of views we can nearly always reach some common ground of agreement. But other independent associations of the patent Bar, and practitioners outside of any association, may come to opposite conclusions from ourselves, which renders it impossible to go before Congress with a united front, and as the subject of patents and

patent law is one lying wholly outside the experience or knowledge of the great majority of our national legislators, it is not to be wondered at that they are slow to adopt any proposed innovation or amendment that does not come before them with, at least, approximately unanimous support from those who are skilled and experienced in such matters.

Assuming, however, that some radical reform in the administration of the patent laws, such, for example, as the establishment of the proposed Court of Patent Appeals, should be recommended by the patent committees of both houses, no one could predict that, if passed at all, it might not be passed with disastrous amendments originating on the floor of the House or the Senate, amendments proposed with the best intentions, but founded in woeful ignorance, or springing from prejudice which ignorance engenders, and which would leave the condition of the law immeasurably worse than if the proposed reform had not been attempted.

It is true at all times, but it is especially true at the present time, when a great wave of popular sentiment against monopolies of every kind has not only swept over, but, so to speak, submerged the land, that it is dangerous to throw open to debate in Congress any extensive revision of our patent laws, lest the stability of our whole patent system be shaken. It is better in the matter of patent law reform to endure the ills we have than by seeking to better them to lose or diminish the good we enjoy.

I do not by this mean to deprecate every attempt at effecting a radical reform which experience shows is desirable, because of any difficulty which may be in the way of its accomplishment. I would only point out the need of caution and conservatism, and in the meantime see if there are not some means within our reach of improving the course of procedure in patent causes without fresh legislation, or, at least, without asking for legislation which would encounter the difficulties I have mentioned.



There are three particulars in which improvement in the procedure in patent suits is much needed:

*First.* In the method of taking testimony in such suits.

*Second.* In the mode of taking accountings; and,

*Third.* In the delay which is insuperable under the present system of equity practice in the United States courts.

*First.* As to the method of taking testimony by deposition out of court before an examiner who is merely a scribe. The evils of this method are too familiar to all of us to need enumeration. It is enough to say that the delay and expense of taking the testimony in a patent cause well defended and of no more than ordinary complexity as to the invention involved is prohibitory to any complainant who has not large pecuniary resources. As we all know, the volume of printed testimony with which we go into court frequently represents an expense of thousands of dollars, seldom less than one and sometimes as much as fifteen or twenty thousand, or even more. It would doubtless greatly diminish this expense and avoid the enormous amount of time consumed in the slow dictation of depositions, if the testimony in patent cases could be taken orally in open court, as it is almost universally in equity cases in the state courts; but I am convinced that this is impracticable with the present number of federal judges. In the circuits where the largest number of patent causes are heard the equity sessions of the court usually last for about three weeks and are held at intervals during ten months of the year. This is all the time that can be allotted to that branch of judicial business, and if the patent cases on the equity docket were heard, and the witnesses who could be produced were examined and cross-examined, and the depositions of those who could not be produced were read in court and the case summed up on both sides, it is plain that nearly the whole time of the court would be occupied by patent cases to the exclusion of others, and that even so it would be impossible to dispose of more than a small proportion of pending patent cases in the congested circuits. Attempts which have been made in the Supreme,

Court and elsewhere to have the rules changed so that the state court rules of taking evidence in equity causes may be adopted on the equity side of the federal courts have invariably proved unavailing.

But some alleviations for the evils of the present practice may be suggested.

1. Would it not be well to modify the rules so as to define and abridge the privilege of making any statement upon the record which counsel may desire? To take up a number of pages of the record, at from fifteen to twenty dollars a page, counting all expenses, by counsel for the complainant calling the attention of the court to the irregular practices of the counsel for the defendant, and counsel for the defendant retorting by exposing the manifest duplicity and sinister designs of the counsel for the complainant, rather arrests the progress of the cause than the attention of the court, and in a majority of cases merely encumbers the record with a debate of no interest to anyone except the participants and without the slightest effect upon the final decision.

2. Something might be gained in reducing the bulk of the record if the rules in relation to printing provided that the printing of documentary exhibits which give rise to no disputed question, such as title papers admitted without objection, the mere formal parts of file wrappers and other documents of a like kind might be dispensed with; and

3. It is worth the serious attention of the Bar to devise some effective means for insisting upon material objections to testimony improperly introduced. As is well known to every practitioner, most of the objections taken in the course of the examination of witnesses and noted upon the record, however well founded, are, in fact, mere formalities and utterly futile.

The difficulties and delays of applying to the court while the testimony is proceeding and the small number of cases in which such applications will be considered, even if the court can be reached, preclude any effective relief from that source. At the final hearing objections are usually either thrown over

entirely or only incidentally mentioned, are rarely noticed in the decision of the case, and where, as too often happens, there are pages of superfluous evidence which have cost the client some hundreds and perhaps some thousands of dollars, the whole mass is simply disregarded as so much rubbish—without penalty to the party who introduced it or compensation to the party upon whom it has been imposed.

It is an easy way for the court simply to disregard improper testimony, and as to the greater part of such testimony that is undoubtedly what takes place. It is true, therefore, that in most instances improper testimony does neither party any harm so far as relates to the ultimate decision of the case, but in a smaller number of cases it *does* do harm, and it is always impossible to estimate to what extent it may have had an effect upon the conclusion finally reached by the court.

Strictly speaking, improper testimony should never be allowed to remain in the record, at least testimony to the reception of which a material objection may be urged. Many objections, although valid in themselves, cease to be of any importance when the record is closed, and such objections counsel may and should waive at the hearing. But there are many that should never be waived. It is very often a troublesome matter to argue them to the court and a troublesome matter for the court to pass upon them, and with the greatest respect we may say that the judges themselves are not wholly free from responsibility for the unnecessary bulk of the records that come before them. They do not always show as much severity as might be desired by striking out improper or superfluous testimony at the cost of the offending party and sometimes place both parties under the ban of judicial displeasure for bringing an overloaded record into court, though one of those parties may have protested against it and used every means in his power to prevent it.

If objectionable testimony, testimony which would be ruled out if offered at a trial in open court, were ruled out at the hearing in equity causes in the federal court, it would go far

toward removing the most serious objection to the present system. Whether any modification of the equity rules or addition thereto is necessary or desirable in order to facilitate the accomplishment of this purpose is a matter only to be determined by discussion and consideration, but that a reform in the practice which would bring about such a result would be most salutary and is worth our earnest efforts to accomplish is a proposition which I am sure will meet with universal assent.

*Second.* In the matter of accountings. Under the present practice in these proceedings the accounting party is, as the first step, called upon to produce an account of profits. Without the statement of any objections or any allegations of fact tending to show the account to be incorrect, the opposing party is allowed to proceed upon the theory that he has the right at once to call for the books, place the defendant or his agent on the stand and go over the account item by item in order to ascertain its correctness, a proceeding which may be prolonged indefinitely and may, and often does, end in an oppressive expense and only "an infinite deal of nothing" as a result. It would certainly tend to decrease the evils of this system if the party objecting to an account were obliged to file such objections in writing and if challenged have them passed upon by the master in analogy to the proceedings on executors' accountings in probate courts or the practice where, in accounts stated, it is allowed to "surcharge and falsify." In this way something in the nature of issues might be framed which would at least partially limit the untrammelled excursion into the defendants' books and business which the present method of accounting for profits allows. But I venture to suggest a more radical remedy. I believe it would be for the general good to abolish the accounting for profits in patent cases entirely and instead thereof provide that in assessing the damages under the direction of the court the defendant may, in addition to the other damages caused by the infringement, be assessed a sum which under all the circumstances of the case shall appear to have been the reasonable value to the

defendant of the use of the invention. The advantages of this change would be, first, a far greater certainty of recovery than now exists in patent accountings, and, second, a great saving in time and expense in reaching a result as compared with the present method.

I know that this proposal at once suggests objections. One such objection is that it is doubtful whether the proposed change would be constitutional, but I think that the weight of authority and argument is upon the side of its constitutionality. Another objection is that such a measure would, by indirection, make every patentee a compulsory licensor; but, as to that too, I hesitate to believe that the prospect of having to account for profits which may be found not to exist and which, where they do exist, are as difficult to prove as they are under the present system, has a greater deterrent effect than would be had by the certainty of having to account for the assessed value of the invention in case the user is convicted of infringement. The temptation to infringe is so largely governed by circumstances and the condition of the trade in each particular case, that the amount of liability the infringer incurs is seldom a controlling factor in determining his conduct. At all events, the suggestion here made is one that I think is worthy of serious consideration.

*Third.* The matter of delay. It is quite certain that there now exist some wholly unnecessary delays in the ordinary proceedings in a suit in equity in the United States courts which could be easily remedied. Under the present rules, if no extensions are allowed and the successive steps are taken at the full time which the rules prescribe, nearly three months elapse between the time of the service of the subpoena and the joining of issue. This might be avoided by conforming the practice as to appearance and the time of pleading to that which prevails in the state courts and is adopted on the law side of the federal courts; that is, the wholly useless general replication should be abolished and the answer should, as matter of law, be treated as if a replication had been filed. The reason

for the replication, under modern practice and conditions, has ceased to exist. The cause should be at issue as soon as the answer is filed or served, and the time to answer should begin from the time the subpoena is served and the complaint is filed or served. I believe it would be better to require the pleading to be served in every instance, but, however that may be, instead of computing time from rule days, which have become mere legal fictions, the time to answer should be a fixed number of days. Perhaps thirty days would be a reasonable allowance in patent cases because of the requirement that the answer shall give notice of the defendant's alleged anticipations, documentary and otherwise. The time of appearance should be fixed at any time within the time to demur or answer.

Without pursuing these details further, it is evident that a most material saving in time is possible by means of the changes here suggested, and that, too, without any great disturbance in the course of procedure which has so long prevailed and with which we have become familiar.

None of the modifications which are proposed in this paper are put forward otherwise than as subjects for consideration and discussion. It has seemed to the author that they give, at least, sufficient promise of practicability and utility to entitle them to consideration. Our patent system is unique among civilized nations. Its results have surpassed those achieved by any other people who have sought in their laws to deal with the same subject. Like all great statutory law, the acts in which that system is embodied can only reach perfection by such cautious changes as time and experience show to be necessary for their highest efficiency, and nothing, however small, is unimportant that may contribute to their improvement.

To ourselves, who have chosen to devote our efforts to the study and practice of that branch of our profession which deals with the administration of those laws, it falls, beyond all others, to labor for their improvement, and we should be unmindful of the dignity and utility of our choice if that labor was not one that we are at all times ready to undertake.

**A BRIEF REVIEW OF LEGISLATION PROPOSED  
AT THE LATEST SESSION OF CONGRESS  
PERTINENT TO PATENTS AND  
TRADE-MARKS.**

**BY**

**WILLIAM W. DODGE,  
OF THE DISTRICT OF COLUMBIA.**

**TRADE-MARKS.**

By an act entitled "An act appointing commissioners to revise the statutes relating to patents, trade and other marks and trade and commercial names," approved June 4, 1898, provision was made for the appointment of a commission by the President of the United States, with the advice and consent of the Senate,

"whose duty it shall be to revise and amend the laws of the United States concerning patents, trade and other marks and trade or commercial names which shall be in force at the time such commission shall make its final report, so far as the same relates to matters contained in or affected by the Convention for the Protection of Industrial Property, concluded at Paris March twentieth, eighteen hundred and eighty-three, the agreements under said Convention concluded at Madrid April fourteenth, eighteen hundred and ninety-one, and the protocols adopted by the conference held under such Convention at Brussels, eighteen hundred and ninety-seven, and the treaties of the United States and the laws of other nations relating to patents, trade and other marks and trade or commercial names."

It was further provided that the commission should report to Congress as soon as possible.

A commission composed of Francis Forbes, Peter Stenger Grosscup and Arthur P. Greeley was duly appointed, and its report was made in 1900 and was in the year 1902 published as Senate Document No. 20, 56th Congress, 2d Session.

Owing to differences of view on the part of the three members of the commission, two reports were made, one by Messrs. Forbes and Grosscup and the other by Mr. Greeley.

Two distinct bills were prepared, embodying the views expressed in the separate reports. The two bills differed primarily in the fact that the one favored by Messrs. Forbes and Grosscup provided for the enactment of an attributive law, or one creating by federal enactment certain property rights in trade and commercial marks, and declared that certain acts in violation of such law should constitute crimes, punishable by penalties prescribed in the bill. The other proposed bill contemplated primarily comparatively free and open registration of any and all marks used in connection with commerce, whether the same be strictly or technically trade-marks or commercial marks, which under the French law and some others are termed "marks of commerce."

The two bills were submitted to and discussed by the American Bar Association at its meeting in 1903, and after due consideration the Greeley bill was taken as the basis or skeleton for a bill which finally received the approval and recommendation of this Association. As finally adopted by this Association it, however, contained the criminal and penal clauses.

At the latest session of Congress (58th Congress, 2d Session) these two bills, together with numerous others pertaining to the protection of trade and other marks, were introduced and were discussed at frequent meetings of the Senate and House Committees on Patents. Numerous conferences were held from time to time between the advocates of the various bills, with the result that the committee representing the American Bar Association, the Committee on Laws and Rules of the Washington Patent Law Association, the committee of the New York Bar Association and numerous individuals agreed upon a modified form of the Greeley bill, which was introduced at the latest session of Congress by Mr. Currier, chairman of the patent committee of the House, and designated as "H. R. No. 15,223."



Subsequent discussion of this bill before said committee, participated in by representatives of the American Bar Association and others, resulted in slight further modifications. Later a conference between members of the Washington Patent Law Association committee and the committee of the New York Bar Association brought forward still further minor amendments, all of which have been submitted to and accepted by the several bodies named, at least in principle or substance.

The bill as it is now proposed differs from House bill No. 15,223 only in a modification of its title, so that it shall read, "A bill to regulate the use of trade-marks and other marks in commerce and to provide for the registration of such marks;" in separating section 19 into two separate sections to indicate more directly or affirmatively the character and purpose of the bill and bring it into harmony with the constitutional provision regarding the regulation of commerce among the states; and in modifying section 24, which pertains to legal proceedings to protect marks registered under the proposed act.

One fact was most clearly developed in the numerous discussions before the patent committees, and that is that no trademark bill containing penal clauses or adding new crimes to those already known to the federal statutes can by any possibility secure favorable report of either committee or stand any chance of passage by either house. For this reason primarily, but also because it is the clear opinion of many who desire a liberal registration act, that the remedies should be practically the same as for infringement of patents, the criminal and penal clauses have been wholly eliminated. They may perhaps be attempted later, as amendments to the act which it is now hoped to pass, but it is the consensus of opinion of all who attended the meetings of the committees that their presence in any bill at this time would defeat the bill in its entirety.

Owing to the persistent and forceful presentation to the committees of arguments in favor of very free registration of all marks not immoral and not insignia of office or the like, the chairman of the House Patent Committee finally appointed

a sub-committee, with Mr. Bonyng, of Colorado, as chairman, to draft a bill for introduction at the coming session of Congress intended to meet the needs of the situation. The urgent necessity of legislation is conceded by the committees, and even the wisdom of taking from the Commissioner of Patents the final determination of the question of registrability is recognized.

The profession generally and the manufacturing and commercial interests, so far as they have been made familiar with the situation, demand free registration, as free and simple as the recording of deeds—*i. e.*, leaving to the courts the adjudication of all legal questions connected with the marks registered. The Commissioner of Patents (and by this is meant the officer rather than the individual) opposes such open registration ostensibly on the ground that the proper demarcation between trade-marks and commercial marks is not or will not be observed and maintained; but the actual reason plainly is that some portion of the power or authority of the commissioner would be taken away.

Upon this question of mere registration for nominal fee calculated to induce the registration of substantially all trade-marks or marks of commerce, or of leaving it, as now, subject to the whim, caprice or preconceived notions of an officer who averages about two years in office, a pretty sharp contest has been maintained. Naturally the committees assume that the Commissioner of Patents is at once thoroughly versed in the law, familiar with the needs of the public and unbiased. It is perhaps not going too far to say that such qualifications are rarely found combined in one officer or one Commissioner of Patents.

The Patent Law Association of Washington has prepared very full notes upon the bill (H. R. 15,223) to explain each of its provisions and the reasons therefor. These will be furnished on request to those interested in the subject. Numerous facts stated in said notes make plain the absolute necessity of prompt and comprehensive legislation. One main fact may be

noted here to advantage, viz.: Most European countries require registration in the country of origin as a condition precedent to registration in them, and, conversely, will register any mark previously registered in the country of origin. Provision to this effect appears in article 6 of the convention concluded at Paris, France, March 20, 1883. See Report of Commissioners, etc., Senate Document No. 20, 56th Congress, 2d Session, p. 149. Unless registration be permitted in the United States, it is impracticable for its citizens to secure registration in such foreign countries, while residents of such countries may register the same marks there and shut out all American goods bearing such marks. Another important point is that if registered in the country of origin the mark may be registered and protected at nominal cost in all countries adhering to the convention concluded at Madrid, Spain, April 14, 1891. (*Ibid.*, p. 160.)

The Commissioner of Patents, maintaining that the present law is well adapted to the requirements of the situation, has proposed certain very slight amendments thereof and has antagonized all other changes as unnecessary and mischievous. In this connection it is proper to say that it was for a time believed by the Committee on Laws and Rules of the Patent Law Association of Washington that the present law could be amended in a simple way to meet the actual needs, but thorough study and discussion of the subject, for which purpose numerous meetings were held, demonstrated to its members as it had previously shown to the committee of this Association, that the only adequate remedy was an entirely new statute based upon the constitutional provision as to regulation of commerce among the states as well as upon the treaty power. Many attempts were made to revise the present law (act approved March 3, 1881), but every effort along such lines was demonstrated to be inadequate and wholly unsatisfactory.

Between the position of the Commissioner of Patents and that of this and kindred associations, many of whose members are also members of the American Bar Association, various

tentative schemes have been advanced. Careful consideration of each has shown plainly the inadequacy thereof. The situation is serious; the remedy must be radical and the legislation must be drastic.

Success can be attained, but only through united action, vigorously prosecuted and sustained. It is therefore hoped that this Association and all kindred bodies may now unite in urging upon Congress directly and through the constituents of senators and members the speedy passage of House bill No. 15,223 as now proposed to be amended.

#### OTHER PROPOSED LEGISLATION.

The bill for creation of a Court of Patent Appeals, drafted by Mr. Taylor and endorsed by this Association (H. R. 9296, S. 2954) was duly introduced in both houses of Congress at the latest session thereof. It met with opposition and was antagonized by what is commonly known as the Johnston bill, originally introduced as House bill 10,769, Senate 2632, and later in modified form as House bill 18,087, Senate 4656. As a result of numerous discussions before the patent committees of the Senate and House, it became clear that neither bill would be reported unless or until the different parties should reconcile their views and unite upon one bill. The advocates of the respective bills succeeded in reaching agreement upon all points except the manner of appointment of the associate justices of the court. Advocates of the Johnston bill maintain that appointment must be made by the President, with the consent and approval of the Senate, in order to be constitutional. Advocates of the bill endorsed by this Association dispute this contention and assert that there is no constitutional ground of objection to the mode of appointment which its bill proposes. Whatever may be the fact on this point, the committees asserted plainly that no bill will be reported until the different sides reach a common basis and unite on one bill.

## THE SO-CALLED MANN BILL.

House bill 13,679, Senate 5219, is a pernicious bill which, despite its dangerous character, is apt to result in dangerous changes of the law unless prompt and vigorous action be taken to prevent. It proposes to add to section 4886 of the Revised Statutes of the United States the following :

“but no patent shall be granted to a citizen of any foreign country which does not grant a corresponding patent to a citizen of the United States: *And provided further*, That no patent shall be granted upon any drug, medicine or medicinal chemical except in so far as the same relates to a definite process for the preparation of said drug, medicine or medicinal chemical.”

The bill is backed by the National Association of Wholesale Druggists and the National Association of Retail Druggists. A report was ordered by the House Committee on Patents declining to approve the bill as drawn, but proposing to add to section 4886 of the Revised Statutes the proviso, “That no patent shall be granted, on any application filed subsequent to the passage of this act, upon any drug, medicine or medicinal chemical, except in so far as the same relates to a definite process for the preparation of said drug, medicine or medicinal chemical,” and to section 4887 of the Revised Statutes a proviso requiring manufacture in the United States within two years of the granting of patent, and continuously thereafter of “any drug, medicine or medicinal chemical on which a patent for a definite process for the preparation thereof has been granted on any application filed subsequent to the passage of this act.” Report No. 2856, 58th Congress, 2d Session. This would single out one special class of patents and patentees and apply a rule not applied to any others, and all because phenacetine costs more in this than in other countries.

Akin to this bill is House bill 6671, Senate 4256. This bill proposes to add to section 4886, R. S., the following paragraph :

"But no patent shall be granted upon any art of treating human disease or ailment or disability, or upon any device adapted to be used in the treatment of human disease or disability, or attached to the human body and used as a substitute for any part thereof, or upon any art of making such device unless such device is adapted to be put on the market and sold."

The bill proposes corresponding amendment of section 4921 R. S. This legislation is advocated by the dentists, who object to paying royalty for the use of certain patented inventions which they regard as essential to their business or profession. Similarly the Grangers in earlier years asked that agricultural machinery be withdrawn from patent protection. This particular bill is thought to stand no present chance of passage or of favorable report, but should be watched.

#### LETTERS ROGATORY.

A bill was introduced, but not enacted into law, providing for the granting of letters rogatory in certain cases connected with applications for patent by representatives of a deceased foreigner. It is believed to be of relatively little importance.

#### INJUNCTIONS PENDENTE LITE.

House bill 6770, Senate 2356, proposes the addition to section 4921, R. S., of the following:

"Injunctions to restrain infringements *pendente lite* shall not be denied for the sole reason that the patent is of recent date or has not been adjudicated."

It adds the proviso:

"*Provided*, That this act shall not in any way apply to any suit at law or in equity pending at the time of the final passage of this act."

The bill is credited to Mr. Lysander Hill, of Chicago, and has been urged by the Chicago Patent Law Association and

opposed to some extent by others. It has been stated by a very influential senator, formerly on the Patent Committee and still consulted by its members, that the arguments against its passage are more forceful than those in its favor. It seems not likely to pass.

#### EXTENSION OF PATENTS.

House bills 1188 and 1189 provide for the extension of patents. No. 1188 contemplates the taking of proofs under control or direction of the Commissioner of Patents and subsequent determination by the Court of Claims. No. 1189 leaves the matter wholly to the Patent Office.

#### PRINTED COPIES.

House bill 11,585, Senate 4062, provided for amending section 493, R. S.; to read as follows:

“Sec. 493. The price to be paid for uncertified printed copies of specifications and drawings of patents shall be determined by the Commissioner of Patents.”

This removed the limitation previously in said section, viz.:

“That the maximum cost of a copy shall be ten cents.”

In a letter to the committee the Commissioner said of the proposed amendment:

“If the statute should be amended as above suggested, it *will permit a price to be charged varying by units of five pages, or fractions thereof*, and reimbursing the government for the cost involved in the production of these patents.”

The House Committee on Patents reported in favor of amending section 493 to read as follows:

“Sec. 493. The price to be paid for uncertified printed copies of specifications and drawings of patents shall be determined by the Commissioner of Patents: *Provided*, That the maximum cost of a copy shall be ten cents for each unit of five

pages, or fraction thereof, contained in the specification and drawing of such printed copy."

This was done before the matter became known to anyone interested other than the Commissioner of Patents. Strenuous opposition to any amendment was made and the matter progressed no further. It is liable to be renewed at a later date and should be watched for.



PROCEEDINGS  
OF THE  
FOURTH ANNUAL MEETING,  
ASSOCIATION OF AMERICAN LAW  
SCHOOLS.

*St. Louis, Missouri, September 27, 1904.*

The fourth annual meeting of the Association of American Law Schools convened in Recital Hall, in the Louisiana Purchase Exposition Grounds, St. Louis, Missouri, on Tuesday, September 27, 1904, at 5 P. M., the President, Ernest W. Huffcut, of Cornell University Law School, in the chair; William P. Rogers, of Cincinnati, Secretary.

The roll call showed that of the thirty-seven members of the Association the following schools, twenty-five in number, were represented by the delegates named:

Baltimore Law School: Alfred S. Niles.

Boston University Law School: Edward A. Harriman.

University of Chicago Law School: J. W. Mack and J. P. Hall.

Cincinnati Law School of the University of Cincinnati: Lawrence Maxwell, Francis P. James, W. P. Rogers.

University of Colorado, School of Law: John B. Fleming.

Columbian University Law School: Henry St. George Tucker, Robert W. Hughes.

Cornell University, College of Law: E. W. Huffcut.

Denver Law School: Lucius W. Hoyt and William B. Hodges.

Georgetown University, School of Law: Ashley M. Gould.

Harvard University, School of Law: James Barr Ames, Joseph H. Beale, Jr., and Samuel Williston.

Illinois College of Law: Howard N. Ogden.

University of Illinois, College of Law: E. J. Northrup and L. A. Harkness.

Iowa College of Law; Charles A. Dudley and Chester C. Cole.

Indiana University, School of Law: Charles M. Hepburn, A. T. Hogate.

University of Kansas, School of Law: James W. Green and William E. Higgin.

University of Maine, School of Law: W. E. Walz.

University of Michigan, Department of Law: James H. Brewster, Dallas Boudeman and H. L. Wilgus.

University of Minnesota, School of Law: Albert F. Mason.

University of Missouri, Law Department: E. W. Hinton, V. H. Roberts, W. W. Brook and J. D. Lawson.

Northwestern University Law School: Lewis M. Greeley.

University of Pennsylvania, Department of Law: William E. Mikell and William D. Lewis.

St. Louis Law School: William S. Curtis and William W. Keysor.

University of Tennessee Law School: Henry H. Ingersoll.

University of Wisconsin, College of Law: Eugene A. Gilmore and H. S. Richards.

Yale University Law School: James H. Webb and Simeon E. Baldwin.

The President: It is usual to appoint at this time a Committee on Nominations and an Auditing Committee to audit the report of the Treasurer.

On motion, the chair was authorized to appoint such committees.

The President: I will appoint as the Committee on Nominations: John D. Lawson, of Missouri; H. St. George Tucker, of Virginia, and William D. Lewis, of Pennsylvania. And as the Auditing Committee: H. L. Wilgus, of Michigan; C. C. Cole, of Iowa, and J. W. Mack, of Illinois.

The minutes of the preceding session of the Association have been printed and distributed, and it is usual to take

them as approved unless some member desires to have them corrected in any particular. The chair hears no motion to that effect, and it will therefore be assumed that the minutes as printed are approved.

The President then delivered the annual address on "The Elective System in Law Schools."

*(The Address follows these Minutes.)*

The President: The next in order is the paper by Dean Richards of the University of Wisconsin College of Law on "Entrance Requirements for Law Schools."

Harry S. Richards, Dean of the University of Wisconsin College of Law, then read his paper.

*(The Paper follows these Minutes.)*

The President: Before proceeding to a discussion of these papers we will listen to the Treasurer's report and the report of the Executive Committee.

W. P. Rogers, of Ohio: The undersigned, as Treasurer of the Association of American Law Schools, respectfully submits the following report of his receipts and expenditures:

Received of E. W. Huffcut, former Treasurer, . . . . .	\$410 39
Collected during the year, membership fees, . . . . .	340 00
Interest on deposits, . . . . .	11 64
Total receipts, . . . . .	\$762 03

I have paid out the funds as follows:

Stamps, . . . . .	\$5 00
Joseph H. Beale, Jr., . . . . .	32 30
H. S. Richards, . . . . .	53 00
E. W. Huffcut, . . . . .	11 60
James Barclay, . . . . .	10 50
James Barclay, . . . . .	12 00
George W. Kirchwey, . . . . .	27 00
Eleanor Platt, . . . . .	12 00
W. P. Rogers, . . . . .	38 00
Dando Printing Co., . . . . .	60 50
Total, . . . . .	\$261 90
Balance, . . . . .	\$500 13

W. P. ROGERS,  
Secretary-Treasurer.

The President: This report, together with the vouchers, will be taken by the Auditing Committee, together with the report of the Treasurer for the preceding year, which was left in one respect unaudited.

Next in order is the report of the Executive Committee.

The Secretary: The Executive Committee presents the following report of its proceedings since August 26, 1903.

On May 13, 1904, the committee met in Buffalo, New York, Messrs. Huffcut, Kirchwey, Beale, Richards and Rogers being present.

An application for membership to the Association from the Washburn College School of Law (Kansas) was presented. Upon motion the consideration of this application was continued for one year.

Pursuant to the following resolution adopted by the Association at its last meeting, to wit:

*Resolved*, That the incoming Executive Committee be requested to investigate and report whether any members of the Association fall short of the requirements of Article VI of the Articles of Association, the Secretary was instructed to submit to the various members of the Association a list of questions touching upon this subject, which was accordingly done, the result of which will be given in a supplemental report.

Concerning the establishment of a periodical, the following resolution was adopted by the committee:

*Resolved*, That the Executive Committee recommends to the Association of American Law Schools the establishment of a journal, to be devoted to the advancement of Legal Education, to be known as the American Law School Quarterly.

A committee, consisting of Messrs. Huffcutt, Kirchwey and Beale, was appointed to investigate and report further in reference to the business details and expenses of establishing such a journal.

It was also determined by unanimous vote of the committee to submit to the Association for its action thereon, the following:

*Resolved*, That the Association of American Law School recommends to the American Bar Association the establishment of a quarterly legal periodical of high character, and of general interest to the legal profession, of which, if desired, the Association of American Law Schools will undertake the editorship.

As a supplemental report the committee submits the following:

The committee recommends that the matter of investigating the questions of whether any members of this Association fall short of Article VI of the Articles of Association be continued by the incoming Executive Committee.

The Executive Committee further recommends that the matter of investigating the details of establishing a journal be referred to a permanent committee for further action thereon.

The President: Gentlemen, what will you do with this report? There seem to three matters calling for action. First, That the incoming Executive Committee be requested to investigate and report whether any member of the Association fall short of the requirement of Article VI of the Articles of Association.

Chester C. Cole, of Iowa: I move that that resolution be adopted.

The motion was seconded and the resolution adopted.

The President: The next matter recommended in the report of the Executive Committee is the establishment of a journal to be devoted to the advancement of legal education and to be known as the American Law School Quarterly. This is, of course, simply a recommendation of the principle without any details, and it is followed by a suggestion that the matter of details be referred to a permanent committee which shall report at another meeting before any steps shall be

actually taken. What is your pleasure in regard to that resolution?

Alfred S. Niles, of Maryland: I move the adoption of the resolution.

The motion was seconded.

Simeon E. Baldwin, of Connecticut: I am one of those who, when the matter was discussed at previous meetings of the Association, were rather skeptical as to whether such a magazine, and the attempt to establish one, would be permanently successful. I have had some experience in the line of publishing university and law school magazines, beginning with the time when I was at Yale as a college boy, when I was one of the editors of what was then called the *University Quarterly*. It is a very serious experiment upon which we are asked to embark, and I should be glad to hear from the committee the reasons which led them to recommend the adoption of the plan.

Edward A. Harriman, of Massachusetts: I should oppose this resolution as well as the other one. It seems to me that this proposition is unwise because it involves the assumption of business responsibilities by this Association, and I do not believe that this Association is the kind of organization which ought to assume the financial responsibility of the publication of a journal. The literary and legal responsibility it would be entirely competent to assume if it were thought wise to assume it, but the financial management of such a journal is hardly within the objects for which this Association is formed. I am inclined, therefore, to vote against the proposition.

Joseph H. Beale, Jr., of Massachusetts: I did not understand, as one of the committee, that we recommended action at this time in approval of the plan, but simply that we asked that a committee be continued to consider the details of the plan and when the plan was sufficiently formulated it would then by that committee be reported to the Association for approval or disapproval. I do not understand that the Execu-

tive Committee now asks the Association whether or not it will approve of a magazine, but it asks the Association only whether it will continue the committee to consider the matter in order that the committee may gather facts and figures and make a report upon which intelligent action can be taken.

Edward A. Harriman: I would like to have the Secretary read the resolution again.

The Secretary (reading): *Resolved*, that the Executive Committee recommends to the Association of American Law Schools the establishment of a journal to be devoted to the advancement of legal education, to be known as the *American Law School Quarterly*.

You will also notice in the report of the Executive Committee that a committee was appointed to investigate and report further in reference to the business details and expenses of establishing such a journal. Then the supplemental report of the Executive Committee states in effect that this committee has made some advance and that the Executive Committee recommends that this matter be placed in the hands of a permanent committee for further investigation.

Edward A. Harriman: Which is the resolution that is now before the meeting?

The President: The whole matter is before the meeting—the resolution, and further investigation in regard to the subject, which is asked to be referred to a permanent committee to report at the next meeting of the Association.

Edward A. Harriman: If the question now is simply on the appointment of a committee to look into the matter and investigate it and report at our next meeting, I shall have no objection to that course being pursued.

The President: Is there any further discussion? If not, the question is on the motion recommending that the matter of investigating the details of establishing a journal be referred to a permanent committee for study and report.

The motion was adopted.

The President: The incoming President will appoint a permanent committee to continue this investigation and report at the next meeting of the Association.

William D. Lewis, of Pennsylvania: I think we should all like to know what is the province of this permanent committee. Is that committee to run the magazine?

The President: No, sir; it is simply to consider the advisability of publishing a magazine.

William D. Lewis: Mr. President, is not the committee of which you are a member a committee which has partially considered this plan, though not fully considered it?

The President: The committee of which I am a member is a sub-committee of the Executive Committee. The Executive Committee will go out of office with the end of this meeting. Therefore, if the matter were referred to the incoming executive committee it might pass entirely into new hands.

William D. Lewis: Is not what we really wish to do to refer the matter to the persons who have already partially considered the plan?

The President: There is no motion before the meeting, unless you desire to make one.

Julian W. Mack, of Illinois: Inasmuch as the resolution did not provide that the incoming President appoint this committee, I move that the committee provided for in the last resolution be the same sub-committee that has had the matter in charge during the past year.

The motion was seconded and adopted.

The President: We now come to the third resolution in the report of the Executive Committee, which is:

That the Association of American Law Schools recommends to the American Bar Association the establishment of a quarterly legal periodical of high character and of general interest to the legal profession, of which, if desired, the Association of American Law Schools will undertake the editorship.

What is the pleasure of the meeting in regard to this?



Simeon E. Baldwin: I move that it be referred to the new committee when raised.

The President: The chair would like to ask for what purpose?

Simeon E. Baldwin: For a report as to their opinions in the matter.

The President: They have already reported. There is no further matter for that committee to entertain.

Simeon E. Baldwin: As I understand it, that committee have reached a conclusion from their present light that it would be a good thing to have a legal magazine published by the Association, but they desire additional time to investigate the matter further.

The President: Yes, sir.

Simeon E. Baldwin: And we have given them that time. Now do I understand that this refers to a different legal periodical?

The President: Yes, sir; to an altogether different legal periodical.

Simeon E. Baldwin: Events come so rapidly that I cannot keep up with them. So there are to be two rival periodicals?

The President: Not rival periodicals.

Simeon E. Baldwin: But two periodicals which this Association is to patronize, but only one of which it fosters.

The President: Precisely. One it fathers and one it fosters.

Edward A. Harriman: Mr. President, I move that this resolution be laid on the table.

Joseph H. Beale, Jr.: We are pretty busy to-night and I hope we will not waste our time. The Executive Committee have considered this matter very carefully. They cannot explain the reason for making this recommendation at this time because it is too late. Why not take the action that they recommend and simply refer it to the committee?

The President: If this resolution passes, it means that it would go to the American Bar Association, and they might

appoint a committee to confer with our incoming Executive Committee, and their joint conference would be reported to the respective bodies next year. What harm could come from such further consideration?

The motion to lay on the table was lost by a vote of 16 to 10.

Joseph H. Beale, Jr.: Now, sir, I move that the resolution be referred to the incoming Executive Committee.

The President: Do you not wish to have it passed on to the American Bar Association.

Joseph H. Beale, Jr.: I do not see how we can do that until we have had it explained and discussed, and we cannot do that without approving it.

The President: Is the motion seconded?

W. W. Keysor, of Missouri: I second it.

The motion was adopted.

The President: That concludes the matter of the Executive Committee's report. Next in order is the discussion of the addresses.

Chester C. Cole, of the Iowa College of Law: I approve very much of many things stated in the paper presented by Mr. Richards, and I desire to present very briefly some thoughts in connection with the subject of this higher culture preparatory to the study of law. I was very much edified last evening by the history of the progress in respect of the advance of preliminary education, as given to us by the President of the Section on Legal Education in his remarks. I was astonished, too, at the rapidity with which that progress has been made. I want to say that there is a difference probably in the two sections of the country in regard to that question of preliminary education. My state, Iowa, requires an equivalent of three years of high school course before applying for admission to the Bar. The law schools of Iowa have adopted a higher grade of preliminary education, and that is required before entering upon the study of law. We are thus far in advance of public sentiment as expressed

through the Legislature. I want to say further that the proposition submitted to-night in regard to the two years' college course—which, as I understand it, is more or less an acceptance, possibly with modifications, of President Butler's idea of granting the degree of A. B. after two years' college work—meets my most decided opposition; that is, I want to announce my opposition to that further advance, and I do it because I feel that it is quite impossible to bring the West—west of Chicago, if you please—up to any such standard; and I furthermore think that it is a mistake in the Association to concentrate so much of importance upon preliminary education. Allow me to give some items from my own experience. More than forty years ago, by the vote of the people of my state, I was called to preside as one of the Justices of its Supreme Court. At that time we had in the state a very strong Bar for so young a state—less than ten volumes of reports; and I, with my associates, who are well known to you (Judges Wright, Dillon and Lowe), were called upon to lay the foundations of the jurisprudence of that young but now grand state. With lawyers, such as I mention to you, Platt Smith, of Dubuque, Joe Knapp, of Keosauqua, and J. C. Hall, of Burlington—the former without a common school education, and none of them with education approximating that now required; and with a Bar not one of whom had the advanced education that is required now by this proposition, or to which we have already attained—I want to say that those men, out of their rugged natures and practical sense, were able to discuss a question and shed internal light upon it. While others, with more culture, perhaps, than they, would borrow light from this and that source, and reflect it upon the court. I tell you that there are things in connection with higher culture which are often so refining as to weaken the grasp, and diminish in force the ruggedness of their presentation.

Another thought I must suggest, although my minutes are short; I think there are other elements than mere education.

I was delighted this evening with the address referring to the elongation of time; but I submit to you that what our profession needs is moral stamina, sterling integrity and recognized noble manhood. We need those as much as we need higher education, and I submit to you that the higher education and the extension of this preliminary education will shut out from us the sons of farmers and mechanics, occupying that position in society from which come the moral principles and sentiments which preserve our profession. I have taught law in law schools as a professor for thirty-nine years, and have just entered upon my fortieth year of instruction. I have a long retrospect of graduates, numbering thousands, and I tell you that those who have made their mark and have advanced the profession have come from the class to which I refer, and that they have made their mark and have aided in the establishment of a jurisprudence both wise and beneficent. I say, therefore, to extend the time and require a measure of culture beyond that which the people in that stratum of society can give, is to shut them out and deprive our profession of the advantages which would come from that ruggedness of character and that sturdy integrity which is certainly found there more than in any other stratum of society. So that I am willing to stand by all that we have gained and made. I may be willing at an early day in the future to advance it, but I am not now. I feel that it would be impossible for the schools of the West to maintain themselves with that advanced position. I feel that there will be a loss to the integrity and stamina of our profession which would not be atoned for by the increase of literary culture.

It may be a little digression, but a thought has been expressed to the effect that teachers in law schools should be those who devote all their time to the work, and not those who are active in the profession. In my school two judges of the district court—and we have four in my city—are graduates of my school, and I am delighted to know that both of them are lecturers in the school, and they are teachers that are able to

teach not only the theory of the law, but the law as applied and as exemplified in their practice and in their administration of it. Two others of my professors are members of leading firms of lawyers in the state. I have arranged that they shall teach in hours when there is no court in session, giving them the benefit of early morning air, and thereby assuring their uniform presence, and not a presence now and an absence then; and I tell you that the presence in a school of teachers with knowledge acquired by actual practice, fortified and re-enforced as it is by a thorough elementary knowledge of the science of the law, gives to the teaching force a potentiality and a fullness that can be acquired in no other way.

I am anxious, therefore, that we shall stand where we are; that we will not advocate further literary culture, but will stand where we are, at least for the present—a year or more. There is this danger, too, that in this effort to create a high grade of learning in the legal profession, beyond that which exists in other professions and businesses of life about us, we may arouse antagonisms to the profession, rather than admiration for it, and further antagonism ought not to be generated.

So, for these reasons, and many others which I might give, but which I will not take the time to state now, I ask that these views that I express may find lodgment with you, and consideration in your reflective moments, and that in connection with your action here you will stay any further proceeding, express no regrets at the rapid advance we have made, but stand by the things we have until we get prepared more as you are in New England now, and then, if you please, advance it.

Simeon E. Baldwin, of Yale Law School: I should be glad to say a word or two to express the pleasure I have had in listening to the paper from the President of the Association, and the obligations we are under to him for the tabulation of results which he has made. I would add that the tendency which the address points out, and perhaps I may say deploras, is one that seems to me a logical result in any school which

adheres exclusively to the system of teaching law by case books. It is impossible in a school teaching law exclusively by case books to cover as much ground as is covered in those schools which adopt a different method, and use cases only as auxiliaries, and not as the exclusive basis. I think it will not be controverted by anybody who has studied the subject that where instruction is given exclusively by case books, and lectures in connection with them, it is impossible to cover the same amount of ground which can be covered in a school which uses them only as auxiliaries. I think it will be found in looking at the schools which offer the largest number of electives that they are those schools which are forced to it by the fact that they use the case system exclusively.

Joseph H. Beale, Jr., of Harvard Law School: I think it will be found also, very probably, that they are the schools which have the means to provide a considerable amount of instruction. It is undoubtedly true that in the schools in which teaching is from case books much less ground is covered in the same time, because the effort is made to cover more thoroughly the subjects that are taken up. But whether the case book schools have many elective courses or few depends almost entirely on the amount of money at the command of the school. I was very much interested in the address of the President on that subject. I think, perhaps, a gloss ought to be put on the figures which were given in the address—a gloss which could not be known except by graduates of the school in question. The number taking electives that the President spoke of are the numbers of students who take the examination in those particular subjects. The number of courses required in each year is five; which means ten hours of lectures. Almost every student attends lectures in from twelve to fourteen hours of work. In selecting those courses on which they will be examined, they select, as a rule, the most difficult ones, as the courses in which the review required for examination will be most valuable. Take, for instance, agency, which as the President pointed out, is not apparently

taken by all students. A very large proportion of the students, if not all, attend the lectures in that subject. They do not, however, prepare themselves for examination in that subject, because it is regarded as a pretty easy subject, and one which does not so well repay thorough review for examination, as more difficult subjects, like trusts or equity or evidence. The choice of electives in any school will be regulated in part by the popularity of the teacher. Very striking instances of that occur in the tables which the President gave. It will also be regulated in very large part, as it is with us, by the advice given to the students in the school by recent graduates who have been in practice. My own course, on the conflict of laws, which the President was pleased to give as an example, of what ought not to be taken, has increased in size from four students ten years ago to one hundred and sixty-five in the last year, almost entirely as the result of advice given by recent graduates returning to the school and talking with the undergraduates. They found that in practice the subject was of extreme importance. Now, there is this danger in the faculty prescribing work. Probably nine out of ten teachers would say, as you say, that this is not a practical subject, but students learning from their fellows have decided that it is. They have decided from experience, not from theory. The choice of electives in schools where there is a large election is in general very wisely made. It is made under this advice of returning graduates, as well as under the belief that the instruction of certain teachers is worth taking in itself.

Chester C. Cole: How can a student of elective studies meet the tests of modern Bar examiners?

Joseph H. Beale, Jr.: They do, sir. I do not know that it is worth while considering how they do, but they do.

Julian W. Mack, of the University of Chicago: I think one answer to Judge Cole's question is that, in the first place, the average student does take more than he is required to take; and, in the second place, there are a number of subjects which

the student can work up quite easily for himself, because we have in some subjects—as, for instance, in what is considered the easy course of agency—most excellent student text books.

John B. Fleming, of the University of Colorado: I desire to add a word to what has been said here as to the suggestion of allowing students to select their subjects of study. I do not believe that it will work—that is, I do not think it would work in Colorado; and, as a practitioner of the Bar more than as a professor and teacher of law, I have only to say that, so far as my testimony is concerned, and so far as my vote in this Association is concerned, that vote and that testimony will be given towards the selection for the students by the professors of their subjects of study, at any rate for the first two years. As to allowing them to select the topics of study during the last year of the course, I am not advised. I have come here more as a learner among law school professors than as a full-fledged one myself, but I can give it as my experience that I believe it is better for you to prescribe the studies for the students.

The President: We will now receive the report of the Auditing Committee.

W. E. Walz: The Auditing Committee reports that it has examined the Treasurer's report and the vouchers submitted to it, and all of the items charged by the vouchers are correct. It has also examined the Treasurer's report of last year, with regard to an item submitted to it as shown in the proceedings of the Association at page 20, and it recommends that both reports of the Treasurer be approved and adopted.

The President: What is your pleasure in regard to this report?

On motion, the report of the Auditing Committee was received and adopted, and the report of the Treasurer as thus approved was adopted.

The President: Is the Committee on Nominations ready to report?



John D. Lawson: The Committee on Nominations begs leave to report recommending the election of Nathan Abbott, of Leland Stanford University Law School for President, and William P. Rogers, of Cincinnati Law School, for Secretary.

The President: Gentlemen, you have heard the report of the Nominating Committee. What is your pleasure?

On motion the report was received and adopted, and the President cast the ballot of the Association for the election of the officers named, and they were declared duly elected.

The Association then adjourned *sine die*.

W. P. ROGERS,  
*Secretary.*

# THE ELECTIVE SYSTEM IN LAW SCHOOLS.

ADDRESS OF THE PRESIDENT.

BY

ERNEST W. HUFFCUT,

DEAN OF THE CORNELL UNIVERSITY COLLEGE OF LAW.

During the past few years there has been a marked tendency toward the elective system in the arts and sciences departments of our American universities. The amount of work offered in these departments is so great that it would occupy a lifetime to compass it. The student is therefore left free to pick and choose that which accords best with his tastes or purposes, and when he has satisfactorily completed a specified number of courses or hours is given his A. B. degree.

This system is obviously based upon the notion that, for general culture and discipline, one course of study is about as good as another, or at least that there is no such superiority of one over another as to justify prescription. This assumption, with its consequent results, is by no means accepted by all educators. The opponents of the system hold that in a general culture course there are certain subjects that may be deemed fundamental and necessary, and that, as to most of the hours necessary for an A. B. degree, a faculty of specialists is better qualified to prescribe than a youth to elect. Without entering into the merits of this controversy, it is desirable to bear in mind that it exists, and that it exists in a field of study of indefinite range and enormous content, and that it exists in the college, where the main object is to develop, discipline and cultivate the mind without reference to any particular or specific utilitarian end.

When we pass from a consideration of culture courses to a consideration of professional courses we observe, first, that the field becomes narrower and more definite; and, second, that

the object in view becomes specific and practical. The professional school is designed to afford an opportunity to acquire a familiar knowledge of the chief subject matter of the profession, together with what we may term professional discipline and professional efficiency. Now the chief subject matter of a profession is not at any given time an indefinite quantity. It may be greater or less in content and extent, but is susceptible of some approximately accurate tabulation. It is, moreover, susceptible of gradation based upon what is fundamental and indispensable as compared with what is secondary and dependent. The professional school must equip its students with a working knowledge of that part of the subject matter which may be termed fundamental and with as much as possible of the rest. It goes without saying that it must do this in such a way as to insure the highest possible degree of general professional discipline and particular professional efficiency; but I think it fair to assume that discipline may as well be promoted by an attention to fundamentals as by an attention to non-fundamentals, while efficiency will be more surely promoted by the knowledge of fundamentals than by the knowledge of non-fundamentals. If, then, the professional school insists that the student shall study the basic things, it accomplishes a double object. It familiarizes him with the great topics of the profession and at the same time disciplines and fits him for the practice of the profession. Even granting that as a mere discipline, the lesser topics might serve an equally useful purpose, why should the student's time be given to them, when by devoting it to the major topics he might achieve the same discipline and a vastly greater range of professional acquirement and professional fitness?

Under these circumstances and in view of these considerations, the question naturally arises whether the elective system, whatever may be thought of it in the college of liberal arts, has any considerable place in the professional school. And on this occasion it is my purpose to discuss particularly whether it has any place in the law school.

That it has already secured a considerable place in many law schools, and even a commanding place in some, would seem to render such a discussion timely and useful. Those who have introduced and developed it in these schools may perhaps welcome an opportunity to explain its reason and its results. Those who have observed it with interest not unmingled with doubt may be glad to learn more about it.

I have found three types of the elective system in law schools: First, where all the work is elective from the outset; second, where one year of work is specified and required and the last two years are elective; third, where the first two years of work are specified and required and the last year is elective.

At Columbia Law School all the work is elective. Seventy-two hours are offered. Forty-two hours are required for a degree. The work elected for a degree is, however, subject to the approval of the dean.<sup>1</sup>

At Harvard Law School and Chicago University Law School the first year work is specified and required. At Harvard this consists of contracts, torts, criminal law, property and common law pleading; at Chicago, of the same subjects, together with agency and persons. At Harvard all the work of the second and third years is elective. About forty hours are offered, and twenty hours (ten each year) are necessary for graduation. At Chicago a practice course is required each year, but all the rest of the second and third year work is elective. About two-thirds of the work offered is necessary for graduation. At the Northwestern University Law School the first year is required, and the student elects each term thereafter eleven hours from specified subjects aggregating about double that number.

<sup>1</sup> A letter from a member of the Columbia Law School faculty, received since the above was in type, says: "Upon looking at our circular, I was surprised not to find the explicit statement that all of the first year subjects are required, except criminal law, constitutional law and domestic relations. Such is the fact, however, and such has been the policy of our school for a dozen years." Columbia, therefore, has essentially the same plan as Harvard, and there are really but the two types.

At the Yale Law School and the University of Pennsylvania Law School the first two years of work are prescribed. At Yale fifteen hours out of twenty-two and at Pennsylvania twelve hours out of twenty-five must be elected in the third year.

I pass by the first type, that of apparently free electives from the outset, because I strongly suspect that it differs little in reality, however much it may differ in form, from the second. As the free elective is tempered, in any event, by the will of the dean, we can have no very clear notion of the actual state of things without a familiarity with the views of that official.

The second type seems to be the one of most interest. Only one-third of the entire work required for a degree is prescribed. The other two-thirds is freely elected from a list of subjects including, at Harvard, agency, persons, damages, quasi contracts, equity, trusts, property, evidence, corporations, negotiable instruments, suretyship, sales, carriers, insurance, partnership, constitutional law, conflict of laws, bankruptcy and admiralty. Each of these subjects extends through an entire year, occupying one or two hours per week, and two of them—equity and property—extend through two years, although one course in property has already been required in the first year. The entire list would occupy the average student about four years, upon the basis of work required each year toward a degree. This school offers, then, five years of work, but gives its degree when three of the five have been completed.

The first question that naturally occurs to one contemplating the system where all the work of the second and third years is elective is, What do the records show as to the choice of subjects? Does the system, after all, result in a normal curriculum, such as would be advised by experts?

In only one school having the elective system have I found in print the record of electives covering a series of years. All students are required to take during their first year contracts, torts, property, pleading and criminal law. Second and third year students elect freely from about forty hours of work and are required to have twenty hours (ten each year) for gradua-

tion. I have sought from the reports to tabulate these electives. Taking the senior electives for a particular year and the junior electives for the preceding year, we obtain approximate results for a particular graduating class. It is not entirely accurate, for some who elected as juniors are not present as seniors. The result is therefore too favorable, since we credit a particular senior class with the junior electives of those who have dropped out. Disregarding this, however, we obtain some instructive results.

Of the 167 seniors of 1903 we find that 83 have elected agency; 19, persons, and 7, damages. Now these are precisely the subjects which Professor Beale, at our session of 1902, in his paper upon "The First Year Curriculum," thought suitable for first year and fundamental work, and two of which—agency and damages—he regarded as highly desirable. In the same class 36 had elected third year property, which included the subjects of future and conditional estates, curtesy, dower, etc.; 81 had elected carriers; 42, insurance; 23, partnership; 104, bills and notes; 47, quasi contract; while 80 had taken conflict of laws; 118, bankruptcy; 122, suretyship, and 134, constitutional law. Practically all had taken equity, trusts, second year property, evidence, corporations and sales.

Preceding years show many curious variations. For example, in several classes tabulated, only from fifty to sixty per cent. of the graduates had taken equity in any form other than trusts. During a series of years nearly all had taken quasi contract and then the number dropped as low as 9 out of a class of 94, and 21 out of a class of 129 and 16 out of a class of 149. For many years only a very small fraction took suretyship, and then the number rose to considerably more than one-half the class. In general, we find that agency, trusts, second year property, evidence, corporations, bills and notes and sales have been the favorite electives, while the other subjects have fallen into lower ranks, showing quite erratic variations.<sup>1</sup>

<sup>1</sup>A member of the Columbia Law School faculty has kindly furnished a table of electives for that school, which shows a pretty steady election of

These results answer, for at least one leading school, the inquiry as to the actual workings of the elective system. The results raise another and vital question. Is it, then, immaterial whether a student pursues during his law school course such primary subjects as agency, equity and evidence or such practical subjects as sales, negotiable instruments, wills and corporations? May he profitably substitute the conflict of laws for equity or admiralty for advanced property or international law for agency or bankruptcy for evidence?

There would seem to be some subjects without a knowledge of which neither professional acquirements nor professional efficiency could be predicated. First among these may be named contracts, torts, property, agency, equity, pleading, evidence and criminal law. Of these all but agency, equity and evidence are usually first year subjects, in whole or in part. But upon what argument may agency, equity and evidence be omitted from the required curriculum? Certainly agency is a fundamental and indispensable topic of the law, essential to the proper understanding of many other topics and in some of its phases involved in an enormous and growing mass of litigation. Certainly equity, with its peculiar doctrines and its peculiar remedies, is essential to any clear understanding of property rights. Evidence along with pleading must be familiar to anyone who proposes to engage in legal practice. As well send the physician into practice without a knowledge of therapeutics as a lawyer without a knowledge of pleading and evidence. Yet under an elective system we find that these subjects may be taken or omitted at the choice or the whim of the student.

Certain other subjects, while not so fundamental as these, rise to prime practical importance, because touching so closely the daily life and trade and property of men. Among these might be named sales, negotiable paper, corporations and wills.

equity, second year property, agency, sales, negotiable paper, corporations, evidence and partnership, although it would appear that a few graduates may have omitted any one or more of these topics. The variations are far less erratic, however, than those given above.

Now these subjects, because of their vital relation to everyday life, ought to be familiar to every lawyer. Yet these also may be omitted under an elective system upon considerations more or less obscure.

Whatever might be said or argued concerning the rest of the curriculum, it seems, from the point of view of practical legal acquisition and of professional fitness, that the subjects named in these two groups should be among those required of all students. It is hardly a satisfactory answer to aver that most students do voluntarily take these subjects under an elective system. The point I desire to emphasize is that every student who is given a law school degree should take them.

It may be granted that some subjects may well be electives, which is equivalent to saying that they may be omitted by the student altogether. Certainly specialized subjects like admiralty law and patent law, and perhaps such topics as international law and the conflict of laws, may be left out of the curriculum. These are, as it were, at the negative pole, while those previously named are at the positive pole of legal study.

Between these two extremes lie a large number of topics which might be included among electives, if there is to be any elective system at all beyond that which warrants the omission of topics from the curriculum altogether. Such are the topics of carriers, insurance, partnership, suretyship, persons, damages, insolvency and bankruptcy, trusts (except so far as covered in the general equity course), quasi contract, constitutional law and procedure.

But what is to be said in favor of such an elective system covering and including these topics? First, that time will not permit that they should all be taught in detail in a required curriculum, and, second, that the choice among them may, for various reasons, better be left to the student than prescribed by the faculty.

The time problem is certainly a grave one. The courses offered at Harvard, which I have taken as the leading example



of an elective school, occupy about fifty hours per week. If only ten hours per week be required, it would take five years to complete them; if twelve hours per week be required, it would take about four years; and if fifteen hours per week be required, as in some schools, the topics not indicated above as concededly proper for electives could all be taken in three years. Moreover, experts might differ as to whether too much time is not allowed proportionally to certain subjects, and whether, if subjects were arranged by semesters instead of by years, a subject occupying two hours for a year might not, for example, be as well covered in three hours for a half year. But even with a reasonable increase in the number of required hours and a reasonable decrease in the time allotted to certain minor subjects, there would still be some excess of hours offered over hours required.

The problem of choice is also a difficult one. Some subjects, like carriers, insurance and persons, are comparatively easy, have slight disciplinary value, and any lawyer equipped with the fundamentals could readily master the details of any one of them. Some subjects, like partnership, though difficult and excellent for discipline, are of dwindling practical importance. Some, like persons and damages, are so implicated in other courses as to become more or less familiar without resort to separate study. Some, like bankruptcy, are matters of statute and statutory construction, and may be followed down to any necessary point by digests and annotations. If there is to be an elective system, the above subjects might properly be included in it, along with admiralty, patent law, international law and conflict of laws. About trusts, quasi contracts, suretyship and constitutional law there is more doubt, because of their inherent importance and their technical difficulties.

It would certainly be true, from the point of view here taken, that the subjects without which no student should be sent forth as professionally equipped would occupy somewhat more than two years of his time, counting twelve hours of class room work per week. This does not seem an excessive

requirement, since it is but two hours a day for the six working days, and counting three hours of preparation for each class room hour would mean an eight-hour day. The first year could easily include contract, tort, agency, elementary property, criminal law and pleading. The subjects of equity, advanced property, sales, wills, negotiable paper, corporations and evidence could be covered in a corresponding period, although it might not be desirable to put them all into the second year.

Of the rest of the subjects that may be offered, including procedure, which is now so much emphasized in some schools and is likely to be so in more, there is the alternative of prescription or election. There seem to be some sound reasons for prescribing quasi contracts, trusts and possibly constitutional law, say five hours in all. This would leave seven hours of electives out of a total of thirty-six required for graduation, or about one-fifth of the whole. By distributing the electives partly in the second year and partly in the third year the required subjects could be graded as might seem most desirable.

If there is to be any elective system at all, it would seem that a fifth of the entire course would leave a sufficient latitude to meet any special purpose that might be served by it, whether that be to allow a student to fit for a specialty like admiralty or to meet a personal taste or whim. To go much beyond this is to risk sending out as professionally fit men who are totally ignorant of some fundamental branches of the law.

To leave a student entirely free to elect after his first year about one-half of the courses offered is to assume that one subject is just as valuable for him as another. Barring some especially simple subjects, perhaps one is about as good as another as a mere intellectual exercise. As a means to legal discipline, probably a course on the conflict of laws is as effective as one on evidence or equity. By a parity of reasoning a course in Choctaw is as good intellectual exercise as one in

Greek. But the college has to observe the demands of culture as well as those of discipline, and ought therefore to prefer Greek to Choctaw. The professional school has to observe the demands of practical legal efficiency as well as those of general legal discipline, and ought therefore to prefer equity or evidence to the conflict of laws or international law. Professional readiness in concrete matters of frequent occurrence will be well served by equity or evidence, but not by conflict of laws or international law, while general legal discipline will also be served by equity or evidence quite as well as by the other subjects. The argument is therefore twice as strong in favor of the fundamental and the vital topics as in favor of the non-fundamental and subsidiary ones.

A free elective system must assume that the one end of general legal discipline is the only end to be considered. This assumption seems but a reflex of that at the basis of the elective system in non-professional courses. But the conditions are totally different. The college is not intended to fit for anything in particular; the professional school is intended to fit for a definite and specialized calling. The college aims at general culture, the professional school at technical efficiency. American law schools are not schools of jurisprudence, but professional schools for the education of legal practitioners. Such schools owe it to the practitioners and to the public the practitioners are to serve to make sure that those who go forth with degrees have been trained in those things essential to the intelligent practice of the profession.

It does not seem that the double object of the law school can be assured under an elective system. It does not seem that the novice can more wisely choose a course than the expert. Observation tends to show that many students under an elective system choose the path of least resistance or of most agreeable aspect. This may do well enough in the college, which, as one of our leading authors has said, should teach nothing that is useful; but it can hardly be justified in the law school, which should teach nothing that is useless, and should especially teach those things that are most practically useful.

It would seem that the supposed necessity for an elective system may be largely avoided by the omission of highly specialized courses or their relegation to a graduate year and by a curtailment of the time devoted to easy, relatively unimportant or subsidiary topics. The tendency is marked in colleges and professional schools toward the multiplication of courses and in the individual teacher toward the magnifying of the importance of his own topics. These tendencies of the craft and of the individual must be recognized, and when the interests of the student demand it should be checked and regulated. It is better to keep the student to the main highways of the law than to lure him into the intricacies and distractions of the byways. A student who has wandered away from the ancient paths of agency and equity in order to explore the thickets of bankruptcy or conflict of laws may some time regret that he was not better advised and guided.

To sum up, it seems to me that the elective system, in order to justify itself in the law school, must show, first, that it familiarizes all students who receive a degree with the fundamental and vital topics of the law, with the chief subject matter of the profession, and, second, that it produces not merely general legal discipline, but also technical professional efficiency, not merely the ability to acquire, to weigh and decide, but the ability to do, to act promptly in any emergency, to know and to practice the law. When we observe that under this system a considerable fraction of students have taken their degrees without any study of equity or agency or some other fundamental topic of the law, and that all are free to do so, we cannot but conclude that the elective system does not meet the test of fitting men in the best possible way for the practice of their profession or of assuring the highest possible potential and practical efficiency.

## ENTRANCE REQUIREMENTS FOR LAW SCHOOLS.

BY

HARRY S. RICHARDS,

DEAN OF THE UNIVERSITY OF WISCONSIN COLLEGE OF LAW.

The question of how extensive the general education should be for those who seek admission to law schools is one of the present problems in legal education. Its solution presents many difficulties, both in the way of a proper theoretical standard as well as of the administration of a standard once determined upon. The question no longer takes the form of no standard versus some standard. The overwhelming sentiment of the Bar and the public as expressed in resolution and statute is in favor of some requirements in preliminary training for prospective law students. Our task is to determine how extensive this preparation should be.

The greatest difficulties are, as usual, practical rather than theoretical. This is well illustrated in the experiences of the Association, under whose auspices we are now assembled. In laying down requisites for membership, the rules provide: "It (the law school) shall require of candidates for a degree the completion of a high school course or its equivalent." If the term "high school" stood for definite attainments, we might regard this rule as fixing at least a fair minimum test for membership in the Association. As a matter of fact, the term does not have a definite meaning, even in a single jurisdiction. Its significance in almost every instance is dependent on the size, resources or pretensions of the community maintaining the school. Many self-styled high schools present a programme that would naturally be given in the seventh or eighth grades of a properly graded school.

If the applicant is not a graduate of a high school, then the question of whether he has the equivalent of such a course is determined by the faculty, and if they be complaisant no one

need be turned away.' In consequence of these vague provisions it is possible for this Association to be made up of schools professing to enforce a common standard, yet admitting students of widely varying attainments or no attainments at all, as best suits the convenience of the particular school.

Universities recognize that the term high school is too indefinite to furnish a standard, and pursue a policy of admitting without examination only students coming from accredited schools—that is, schools whose course of study, method and equipment correspond to a standard fixed by the university faculty, the school's compliance with the standard being determined through frequent inspection by members of the university faculty. If this standard could be fixed by this Association's requiring the candidate who desires to enter without examination to furnish a certificate of graduation from a school accredited by the leading educational institution of the particular jurisdiction, or failing to produce such certificate, to pass the examination presented by such institution as the equivalent of such a certificate, a more satisfactory standard would be attained.

It is probably not to be regarded as the judgment of this Association that the high school training is sufficient for prospective law students, but rather we have here a convenient rule for determining the good faith of the schools represented at these annual conferences, which have for their professed object the advancement of legal education. The question of what sort of preparation a student should have in order to pursue the study of law to the best advantage is still open.

Assuming that the high school education stands for definite attainments, does it follow that the graduates of these schools are prepared to take up the study of law with the best results? I feel confident in saying that, as a class, they are not. In considering the preparation to be exacted we must have regard to the fact that the student is about to enter a field presenting many and intricate problems. He must master a form of reasoning technical to a degree, expressed in terminology foreign

to his ordinary vocabulary. He is expected to exercise judgment in discriminating between apparently conflicting doctrines—a task which the men with the best undergraduate training attainable find difficult. The average high school graduate is unfitted by development and training for this work. His age is usually from sixteen to eighteen years, a period in his life when the physical nature is in the ascendant. The desire to play is strong. He has no definite purpose, no conception of the hard fact that knowledge comes through labor; impatient of restraint or advice; the judgment is dormant; memory is the active faculty. This general attitude is partly the result of his growth and partly the consequence of his previous education. The purpose of a high school is to impart information. The student pursues each subject by the study of text books, which are constructed with great ingenuity to impart information in an entertaining way. He knows these texts, perhaps, but has little or no notion of the principles that underlie their contents, and cannot apply them to original problems. The memory is the faculty called in question, and to it the student turns for a refuge when he fails to understand the task assigned. His actions are watched and every step is guided. This certainly is not the training that fits a student for the study of law. The habit of acquiring knowledge by rote is a handicap rather than an aid to legal study.

It is sometimes urged that the course of study for the high school student should be arranged with a view to his subsequent career. Thus it is suggested that, as a preliminary to the law, a student should study mathematics, history, economics or politics since, it is urged, these subjects develop the faculties and furnish the information that should be possessed by the successful lawyer. While it is no doubt true that the knowledge of these topics will prove of value to the lawyer—indeed, it is difficult to suggest a topic that will not prove of value in that respect, so broad is the field of his interests and activities—still it has never been demonstrated that this particular group of studies develops the proper intellectual faculties for

the study of law. Intellectual power comes unconsciously as a result of mastering the difficulties presented in any course of study. There is no doubt a certain economy in an arrangement by which the student acquires knowledge of practical value while he is acquiring power, yet the former bears so slight a relation to the latter that it is hardly worthy of consideration as the basis of a curriculum.

The breach between the high school and the law school has been widened immeasurably by reason of the broadened scope of law school instruction. Not only have new topics been added to the curriculum, and the instruction in other topics amplified, but also the methods of instruction have been changed and elaborated, not merely to meet the necessities of a more elaborate curriculum, but in response to the new conception of the purpose and function of a law school. The change in the law schools is but a phase of the movement extending the bounds of university education generally.

The natural and social sciences have come into the university curriculum as the result of a movement of this kind, and now occupy a field so large that it is difficult to realize that their recognition has come within the last forty years. Curiously enough the law, although long recognized as a subject of university study in Europe, has been among the last to be accepted as a topic worthy of university instruction and investigation, and capable of scientific treatment and development, in American universities. Almost without exception the law schools of to-day had their inception as mere classes, conducted by lawyers who gave occasional lectures at times snatched from the activities of practice. The primary purpose was to prepare for admission to the Bar. This type of school served the purpose of its time, and gave many strong men to the Bar, but it no longer exists as a determining factor in legal education. The schools of to-day are, for the most part, connected with universities, and this connection is becoming more close and vital, though in many respects still formal because of suspicion and of a failure to appreciate the real community of interest.



University methods have supplanted the haphazard procedure of the past.

Out of this new environment has come the new purpose of the law school—to fit men for the Bar in the broadest sense of the term, not to impart information merely or to instruct in the art of winning cases, but to stimulate a desire for a knowledge of the history of the law, the appreciation that the law is a system founded on broad principles, its application modified by changing economic and social conditions; and by discussion and analysis of cases and the writings of eminent jurists to acquire the habits of thought and the methods of reasoning of the trained lawyer. The student of necessity stores his memory with legal principles, but that acquisition is regarded as subordinate to the higher purposes of his instruction.

If this be the purpose of the law school as it is conducted to-day, it follows obviously that the age, previous methods of study and attitude of the high school graduate all combine to handicap him as a law student. A radical readjustment of his mental habits is essential before he can take up his law work effectively. If the work of the law school is really graduate work, suited only to those students who are mature in years and who have had broader training than is furnished by the high school, why not require the student to complete an undergraduate course before he commences his law study? Such a provision would solve the difficulties arising from the lack of maturity and training of the student. A few schools have already made the possession of an A. B. degree a prerequisite to entry into the law school, and by reason of their location and resources have been able substantially to maintain this standard. It is not a rule, however, which schools generally can adopt. The problem presents many considerations of a practical nature, varying in importance with the character, location and resources of the schools involved.

The marvelous growth of law schools in recent years is due in large measure to the faith of the Bar in the law school as

the best place to acquire a legal education. The strength of the law school and its power for good are dependent in large measure on the support and good will of members of the Bar. Through them have come about the reforms in entrance requirements and the advancing of standards so far as they are embodied in statutes. The general public is indifferent about the matter, ignorant of conditions, and is not a factor in the problem. All reform must come in the future as it has come in the past—through the medium of the Bar itself, and no change is practicable which does not commend itself to the judgment of the profession.

The sentiment of the Bar is unquestionably in favor of high standards. It does not follow, however, that the Bar is at present prepared to indorse the A. B. requirement as a prerequisite to legal study. If the attainment is placed at a point reached only by the exceptional student, then it is safe to say that the Bar will not indorse the change, and the school adopting such a test will forfeit to a considerable extent the co-operation of its strongest supporter. On the other hand the school will fail in its duty (and this applies particularly to state law schools) to the state and to the Bar of bringing as many as possible of the future members of the Bar under the influences of university thought and university methods.

The present standing of the law school with the profession is not based upon sentiment, but upon the conviction founded upon observation and experience that a law school education is better calculated to fit a young man for the practice of the profession than is study in a law office. The school is judged by the character and ability of the men it sends out. The value of the methods of instruction, the requirements for admission to the school, are tried by this one test. The raising of standards must be gradual and tested by results, if it is to be a permanent advance, and if the school is to keep in touch with the profession generally.

A further objection to putting the schools on the A. B. basis is the amount of time required to complete the combined

courses. If a student enters college at the age of eighteen and spends the usual period of four years before receiving the A. B. degree, and then adds three years in the law school, he spends seven years in study and does not come to the Bar until he is twenty-five, and if he adds to this a year in a law office, as is commonly done, he is at least twenty-six years of age before he is ready to enter upon his career at the Bar; and unless his career is exceptional, he will be at least thirty before his earnings will enable him to establish a home and assume the responsibilities regarded as essential to his own well being and that of the state. If entrance requirements continue to be advanced and the curriculum of the college extended, this period of study must of necessity be increased.

There is a feeling not confined to the general public, but shared by men who are leaders in education to-day, that this period is too long. At a recent meeting of the National Educational Association this problem was discussed, papers being presented by the presidents of three great universities, and their opinion was strongly in favor of a shorter rather than a longer period. The reasons given, in addition to those already alluded to, are that it is bad for the community to have its young men so long delayed from the activities of life; that it closes the doors of a liberal training to young men of worth of small means, who could not sustain themselves through so long a period; that it is bad for the young man himself to lead a life for so long a period at variance with the life of the ordinary citizen; that it tends to make him indecisive and weak.

Many plans have been suggested as a means of shortening the time requirement. At Harvard the same number of courses are requisite to graduation as before, but the student is permitted to complete them in three years if he has the ability. In other institutions the prospective law student is permitted to take up the study of law in his senior year (and in many cases in his junior year), in connection with his undergraduate work, and to count these courses toward his A. B. and his law degree. The effect of this arrangement is to cut down his

residence to six years. The pursuit of graduate studies and law studies at the same time has generally proven unsatisfactory, both to the faculty of the college and the law school, the difficulty being that the student is doing, or trying to do, two fundamentally different things at the same time. If he continues to be interested in his undergraduate work, he is an indifferent law student; if he enters into his law work with zeal, his college work is neglected. A more satisfactory arrangement prevails in other schools, which avoids the objection of divided interest, by permitting the student at the end of his junior year to take up the full work of the first year in the law school, and receive his A. B. degree at the end of that year. This amounts to cutting down the college course to three years, since the law school work is taken entire and the senior work of the college is eliminated. All these plans are merely makeshifts to accomplish an admittedly desirable result without appearing to sacrifice the college course. If one can read the signs aright, the four years college course will be the exception rather than the rule in the very near future. The undergraduate degree will be conferred for work done. In this discussion we are not concerned with the present status or fate of the undergraduate course. It is alluded to here for the purpose of making clear that the period of study for both degrees is recognized as too long. The cutting off of the senior year in many schools is further proof that the work of that year is not essential to the student of law. We are not concerned with what preparation is highly desirable, but with what preparation is really essential to the law student. Can one cut off still another year of the college course without sacrificing any part of the essential preparation? The great concern after all is not whether the student has an A. B. degree, but whether he has sufficient training to carry the work required.

At the University of Wisconsin we have been impressed with the difficulties, both for the instructor and the pupils, when a class is made up of men of varying degrees of preparation, and have felt the force of the other objections alluded to.

We have sought a new standard that will, it is hoped, secure a class of students of substantially uniform preparation. In determining what that standard should be, it was necessary to recognize first of all that the law is an intricate and difficult subject, not in its nature susceptible of primary treatment and, therefore, not fitted for the high school graduate; that even if capable of primary treatment under the summary methods of the old school, it is not so now. The extension of the courses from one to two and from two to three years has not meant an increase in topics taught, so much as it has meant an extended and minute treatment of topics already in the curriculum. This elaboration has brought in its train methods of instruction and increased demands on the student's capacity, which in turn demand a maturity and preparation not afforded by the old training.

While not believing that the law is a purely graduate study, we do hold that it is a specialized study, and that as such it should occupy the same relative position in the curriculum as other specialized topics do. No teacher would for a moment think of putting a freshman into seminar work, because he would lack not only the preliminary knowledge, but also the maturity and mental discipline essential to make his work effective, and to permit him to enter the work would be merely a waste of effort and time. Two years of college work was decided upon as a requisite. Such a provision is in accord with the idea that the law is a specialized study and properly comes in the same period in the course as other specialized courses, which period was found to be the beginning of the junior year. An examination of the curricula of representative universities will show that the first two years in college are largely devoted to fundamental and disciplinary courses. Some freedom of election is permitted, but the work is in the main restricted. With the junior year the student is permitted to take work in accordance with his individual tastes, and the subjects offered are of a sort which experience has shown requires maturity and preparation. We have simply followed the plan in vogue

in all representative universities as to specialized courses. The rule is also in accord with all universities offering law studies to undergraduates. The election is invariably confined to the junior and senior years, and in most instances to the senior year. This practice also shows inferentially that the university faculties recognize that law is an advanced and not an elementary study.

This standard meets to a large extent the objections to the other standards mentioned. Instead of coming into the school at the age of seventeen or eighteen, the student now enters at twenty or twenty-one. By two years' contact with university life he has gained in many ways. He sees for the first time the inter-relations of knowledge. Through the laboratory or university methods employed, which conform to the methods used in the law school, he is encouraged to think for himself, and to develop a personality, he is put in the way of university thought. He will finish his course at twenty-three, after five years of university study, certainly not too long a period for one seeking membership in a learned profession, and even after a year's clerkship in an office, he comes to the Bar at twenty-four, young enough for the responsibilities of actual business. Under the practical workings of the plan, I have no doubt the student will desire to take more than two years of college work, and will take a degree, particularly if the practice alluded to and in vogue in many reputable schools is employed—that of permitting one year in the law school to count toward a degree in arts as well as toward a degree in law. This standard has the merit of being a conservative rather than a radical departure from the standards previously regarded as adequate. It co-ordinates the preparation with the work expected in the law school. The barrier is not placed at a point insurmountable in any community that supports reputable institutions of higher education. It serves as a warning to those seeking admission to the Bar that, under the complexities of modern business life, success is not to be attained by those who enter the struggle handicapped by insufficient preparation.

It is high time the prevalent notion that the law is a field in which the superficial and incompetent can hope to succeed should be destroyed. The growing interest in the investigation of the history and sources of the law, the broadening scope of law school instruction under the influence of university connections, shows that a decided reaction against the old notion is in progress. This advance in legal instruction itself demands in turn an advance in preliminary education to keep pace with it. The two must be co-ordinated until the once common provision in law announcements that "the student must have sufficient education to understand law" will not mean merely the three R's, but the fundamentals of a university training.

PROCEEDINGS  
OF THE  
FOURTEENTH ANNUAL CONFERENCE  
OF  
COMMISSIONERS ON UNIFORM STATE LAWS  
HELD AT  
ST. LOUIS, MISSOURI,  
*September 22, 23 and 24, 1904.*

OFFICERS OF THE CONFERENCE,  
1905.

AMASA M. EATON, *President*,  
Providence, Rhode Island.

WALTER S. LOGAN, *Vice-President*,  
New York, New York.

ALBERT E. HENSCHER, *Secretary*,  
11 Broadway, New York, New York.

FRANCIS B. JAMES, *Treasurer*,  
Cincinnati, Ohio.

J. MOSS IVES, *Assistant Secretary*,  
Danbury, Connecticut.

MEMORANDUM.

The National Conference of Commissioners on Uniform State Laws is made up of commissioners created by the different states, meeting in conference and organizing themselves into a national body for the better accomplishment of the work for which its members were appointed by the states. The commissioners, usually three from each state, are appointed under laws of the respective states creating them,



usually for five years, with authority to confer with commissioners of the other states and recommend forms of bills or measures to bring about uniformity of law in the execution and proofs of deeds and wills, in the laws of bills and notes, marriage and divorce and other subjects where such uniformity seems practicable and desirable. The officers of the National Conference consist of a President, Vice-President, Secretary, Treasurer and Assistant Secretary, elected annually. Fourteen Conferences have so far been held: the first at Saratoga, for three days, beginning August 24, 1892; the second at New York, on November 15 and 16 of the same year; the third at Milwaukee, Wisconsin, August 31, 1893; the fourth at Saratoga, August 22 and 23, 1894; the fifth at Detroit, August 26 and 27, 1895; the sixth at Saratoga, August 15, 17 and 18, 1896; the seventh at Cleveland, Ohio, August 23 and 24, 1897; the eighth at Saratoga, August 15, 16 and 17, 1898; the ninth at Buffalo, New York, August 25, 26 and 28, 1899; the tenth at Saratoga, August 25, 27, 28 and 29, 1900; the eleventh at Denver, Colorado, August 19 and 20, 1901; the twelfth at Saratoga, August 25 and 26, 1902; the thirteenth at Hot Springs, Virginia, August 24 and 25, 1903, and the fourteenth at St. Louis, Missouri, September 22, 23 and 24, 1904.

A complete list of the commissioners of the several states, with standing committees will be found in the following pages. Drafts of the various acts recommended by the Conference will be found in the previous reports of the Conference, copies of which can be had by writing to the assistant secretary at Danbury, Connecticut.

At this Fourteenth Conference much time and attention was given to the consideration of the Uniform Sales Act, drafted by Prof. Williston. It is hoped to complete this act at our next Conference, it having been under Prof. Williston's consideration during the last winter with the amendments suggested. Copies may be procured of him, care of the Harvard Law School, Cambridge, Massachusetts, or of the President or assistant secretary.

Through the generosity of the American Warehousemen's Association in giving \$1500 for the purpose of drafting a Uniform Act on Warehousemen's Receipts the commissioners have been able to entrust this matter to Prof. Williston and Barry Mohun, Esq., author of a well known work on warehousemen. This committee will report at the next Conference.

Professor James Barr Ames, Dean of the Law School of Harvard University, is to draft a proposed Act on Partnership, which will be the next subject to receive the attention of the Conference.

The Negotiable Instruments Act has been adopted in the following states and territories :

New York, Laws of 1897, chapter 612; 1898, chapter 336.

Connecticut, Laws of 1897, chapter 74.

Colorado, Laws of 1897, chapter 239.

Florida, Laws of 1897, chapter 4524.

Massachusetts, Laws of 1898, chapter 533; 1899, chapter 130.

Maryland, Laws of 1898, chapter 119.

Virginia, Laws of 1897-98, chapter 866.

Rhode Island, Laws of 1899, chapter 674.

Tennessee, Laws of 1899, chapter 94.

North Carolina, Laws of 1899, chapter 733.

Wisconsin, Laws of 1899, chapter 356.

North Dakota, Laws of 1899, chapter 113.

Utah, Laws of 1899, chapter 83.

Oregon, Laws of 1899.

Washington, Laws of 1899, chapter 149.

District of Columbia, Laws of 1899, U. S. Stats., page 785.

Arizona, R. S. 1901, title 49.

Pennsylvania, Laws of 1901, chapter 162.

Ohio, laws of 1902.

Iowa, Laws of 1902, chapter 130.

New Jersey, Laws of 1902, chapter 184.

Montana, Laws of 1903.

Idaho, Laws of 1903.

Kentucky, Acts of 1904, chapter 102, to take effect June 13, 1904.

Louisiana, Act 64 of 1904, to go into effect August 1, 1904.

The Conference earnestly urges upon the legislatures of the several states, as well as upon their commissioners, the importance of introducing at the next session all of the bills recommended which have not passed, and the secretaries would ask members to communicate with them whenever such bills are introduced.

In case the list of commissioners as printed in this report is not correct, or any changes are made subsequently, the secretary should be notified at once.

Extra copies of this report and all previous reports may be obtained on application to the assistant secretary at Danbury, Connecticut, or of the President.

## RULES OF CONFERENCE OF COMMISSIONERS.

### CALLING TO ORDER.

1. The Annual Conference shall be called to order by the President, or, in his absence, by the Vice-President, or, in the absence of both the President and Vice-President, by the Secretary of the last preceding Conference.

### ROLL CALL.

2. The Secretary shall call the roll of members by states and report the names of those present.

### OFFICERS.

3. The Conference shall annually thereupon proceed, upon nomination of a committee appointed for that purpose, or by direct vote of the Conference, as it shall determine the election of a President, Vice-President, Secretary, Treasurer and Assistant Secretary, who shall serve as such during the Conference, and until their successors shall be elected.

### COMMITTEES.

4. The President shall, as soon as may be after his election, appoint the following standing committees :

- a.* Executive.
- b.* Commercial Law.
- c.* Wills, Descent and Distribution.
- d.* Marriage and Divorce.
- e.* Conveyances, Depositions and Proof of Statutes of Other States.
- f.* Insurance.
- g.* Congressional Action.
- h.* Appointment of New Commissioners.
- i.* Purity of Articles of Commerce.
- j.* Uniform Incorporation Law.

Also such other committees as may be required.

ORDER OF BUSINESS.

5. At each session of the Conference the order of business shall be as follows, unless otherwise ordered by the Conference :

- a.* Call the roll.
- b.* Minutes of last meeting.
- c.* Election of officers.
- d.* Report of Standing Committees, and discussion thereof, in the order named in section 4.
- e.* Unfinished business.
- f.* New business.

REPORTS OF COMMITTEES.

6. All reports of committees shall be in writing. No commissioner, except the member of the committee making the report, shall speak more than once to the subject matter of the report, nor for more than ten minutes, until after all the commissioners shall have had an opportunity to be heard.

MOTIONS AND RESOLUTIONS.

7. Motions and resolutions shall, on request of the Chair, be reduced to writing, and be referred at once to the appropriate committee, unless otherwise directed by a majority vote of members present.

8. When a question is under debate no motion shall be received but

- a.* To adjourn.
- b.* To take a recess.
- c.* To lay on the table.
- d.* For the previous question.
- e.* To postpone to a certain day.
- f.* To commit.
- g.* To amend.
- h.* To postpone indefinitely.

Which several motions shall take precedence in the order in which they stand arranged. When a recess is taken during

the pendency of any question, the consideration of such question shall be resumed upon the reassembling of the Conference unless otherwise determined.

9. A motion to adjourn shall always be in order; that and the motion to lay on the table shall be decided without debate. A motion for recess, pending the consideration of other business, shall not be debatable.

#### ABSENCE OF MEMBERS OF CONFERENCE.

10. When any state having a commission shall fail to be represented at two consecutive meetings of this Conference the President shall notify the Governor of such state of the absence of its commissioners for such action by the Governor as he may deem proper.

#### REPORTS OF COMMITTEES.

11. Each committee, whose province is some branch of law, shall report annually what, if any, recommendations it desires to make; what progress has been made in securing the adoption of bills within its province already recommended by the Conference, and what difficulties have been met in securing the adoption of such bills. It shall be the duty of the President to call the attention of the chairman of each such committee to this rule a reasonable time before each annual meeting of the Conference.

## LIST OF COMMISSIONERS.

- ARIZONA.—Edward Kent, Phoenix; George R. Davis, Tucson; E. E. Ellinwood, Prescott.
- CALIFORNIA.—John F. Davis, 324 Pine Street, San Francisco.
- COLORADO.—Robert J. Pitkin, 441 Equitable Building, Denver; Jacob Fillius, 830 Cooper Building, Denver; Thomas H. Devine, Opera House Block, Pueblo.
- CONNECTICUT.—Talcott H. Russell, New Haven; E. Henry Hyde, Jr., Hartford; Erliss P. Arvine, New Haven.
- FLORIDA.—Robert W. Williams, Tallahassee; John C. Avery, Pensacola; Louis C. Massey, Orlando.
- GEORGIA.—Peter W. Meldrim, Savannah; A. C. Pate, Hawkinsville.
- ILLINOIS.—John C. Richberg, 604 Opera House Building, Chicago; Arthur A. Leeper, Virginia, Cass Co.; E. Burritt Smith, 415 First National Bank Building, Chicago.
- INDIANA.—Robert S. Taylor, Fort Wayne; William A. Ketcham, Indianapolis; Oscar H. Montgomery, Seymour; George L. Reinhard, Bloomington; Samuel O. Pickens, Indianapolis.
- IOWA.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; H. O. Weaver, Wapello.
- KANSAS.—John D. Milliken, McPherson; J. O. Wilson, Salina; Thomas B. Wall, Wichita.
- LOUISIANA.—Thomas J. Kernan, Baton Rouge; W. O. Hart, New Orleans; J. R. Thornton, Alexandria.
- MAINE.—Charles F. Libby, Portland; Frank M. Higgins, Limerick; Hannibal E. Hamlin, Ellsworth.
- MARYLAND.—Milton G. Urner, Frederick City; George R. Gaither, Jr., Baltimore; Stevenson A. Williams, Bel Air.
- MASSACHUSETTS.—James Barr Ames, Harvard Law School, Cambridge; Frederick J. Stimson, 53 State Street, Boston; L. D. Brandeis, 220 Devonshire Street, Boston; George E. McNeil, Cambridge; George W. Weymouth, Fitchburg.
- MICHIGAN.—C. W. Casgrain, Detroit; George W. Bates, 32 Buhl Building, Detroit; Wesley W. Hyde, Grand Rapids.
- MINNESOTA.—Charles E. Flandrau, St. Paul; W. S. Patte, Minneapolis; W. W. Billson, Duluth.
- MISSISSIPPI.—R. H. Thompson, Jackson; S. S. Calhoun, Jackson; W. V. Sullivan, Oxford.

**MONTANA.**—J. B. Clayberg, Helena; T. C. Marshall, Missoula; J. W. Strevell, Miles City.

**NEBRASKA.**—J. M. Woolworth, Omaha.

**NEW HAMPSHIRE.**—Joseph W. Fellows, Manchester; H. E. Burnham, Manchester.

**NEW JERSEY.**—Woodrow Wilson, Princeton; John B. Hardin, Prudential Building, Newark; Frank Bergen, Elizabeth.

**NEW YORK.**—W. L. Snyder, 5 Beekman Street, New York City; Henry C. Willcox, 100 Broadway, New York City; Walter S. Logan, 27 William Street, New York City; Albert E. Henschel, Secretary, 214 Broadway, New York City.

**NORTH DAKOTA.**—Burke Corbet, Grand Forks; Charles F. Amidown, Fargo; George W. Newton, Fargo.

**OHIO.**—Seth S. Wheeler, Lima; Francis B. James, 401-405 Pike Building Cincinnati; William E. Cushing, 632-637 Society for Savings Building, Cleveland.

**OKLAHOMA.**—J. C. Strang, Guthrie; J. W. Shartell, Oklahoma City; C. R. Brooks, Guthrie.

**PENNSYLVANIA.**—William H. Staake, 501-505 Franklin Building, Philadelphia; Walter George Smith, 1006 Land Title Building, Philadelphia; C. La Rue Munson, Williamsport.

**RHODE ISLAND.**—Amasa M. Eaton, Providence; John H. Stiness, Providence; James Tillinghast, Providence.

**SOUTH CAROLINA.**—H. E. Young, 28 Broad Street, Charleston; W. R. Boyd, Darlington.

**SOUTH DAKOTA.**—A. B. Kittridge, Sioux Falls; L. B. French, Yankton; J. W. Wright, Clark.

**VIRGINIA.**—A. A. Phlegar, Christiansburg; R. T. Barton, Winchester; John Garland Pollard, Richmond.

**WASHINGTON.**—Charles E. Shepard, Seattle; Ira P. Englehart, North Yakima; Alfred Battle, Alaska Building, Seattle.

**WISCONSIN.**—Commission not yet named.

**WYOMING.**—Commission not yet named.



## COMMITTEES FOR THE CONFERENCE OF 1905.

(Names given first are Chairmen.)

### STANDING COMMITTEES.

1. **Executive.**—Staake, James, Libby, Logan and Meldrim.
2. **Commercial Law.**—James, Ames, Bates, Bergen, Ellinwood, Smith, Stiness, Libby, Pollard, Russell and Meldrim.
3. **Wills, Descent and Distribution.**—Smith, Brandeis, Cushing, Pollard, Reinhard and Kent.
4. **Marriage and Divorce.**—Richberg, Ames, Davis, Staake, Stiness, Barton and Williams, of Maryland.
5. **Conveyances, Depositions and Proof of Statutes of Other States.**—Cushing, Teller, Patterson, Wall, Kernan and Phlegar.
6. **Insurance.**—Libby, Patterson, Williams, of Florida, and Hardin.
7. **Congressional Action.**—Stimson, Logan, McClain, Staake and Pickens.
8. **Appointment of New Commissioners.**—Eaton, Ketcham, Williams, of Florida.
9. **Purity of Articles of Commerce.**—Staake, Ames, James, Logan and Richberg.
10. **Uniform Incorporation Law.**—Logan, Bergen, Ketcham, Richberg and Woolworth.

### SPECIAL COMMITTEES.

**Committee on Uniform System of Accounting in State and Municipal Affairs.**—Staake, Cushing, Smith, Thornton and Higgins.

**Committee on Torrens System of Registration of Title to Land.**—Stiness, Arvine, Hart, McClain and Hyde.

## PROCEEDINGS.

*St. Louis, Thursday, September 22, 1904, 10 A. M.*

The Fourteenth Annual Conference of the Commissioners on Uniform State Laws convened in the Federal Building, St. Louis, Missouri, on Thursday, September 22, 1904, President Amasa M. Eaton in the chair, and the following other commissioners being present:

Charles F. Libby, Portland, Maine; Frank M. Higgins, Limerick, Maine; Hannibal E. Hamlin, Ellsworth, Maine; Robert W. Williams, Tallahassee, Florida; John Garland Pollard, Richmond, Virginia; W. O. Hart, New Orleans, Louisiana; J. R. Thornton, Alexandria, Virginia; William H. Staake, Philadelphia, Pennsylvania; Thos. J. Kernan, Baton Rouge, Louisiana; Francis B. James, Cincinnati, Ohio; Wm. E. Cushing, Cleveland, Ohio; James Barr Ames, Cambridge, Massachusetts; Walter S. Logan, New York, New York; Talcott H. Russell, New Haven, Connecticut; Peter W. Meldrim, Savannah, Georgia; John R. Hardin, Newark, N. J.; also Albert E. Henschel, New York, Secretary of the New York State Commission, and Secretary of the Conference. Other members attended the Conference later.

The minutes of the last meeting were approved as printed and their reading dispensed with.

The President, Amasa M. Eaton, of Rhode Island, delivered the annual address.

*(The Address follows these Minutes.)*

The President: The election of officers is in order. What is the pleasure of the meeting?

Charles F. Libby, of Maine: I move that a committee of three be appointed by the chair to nominate officers.

The motion was seconded and adopted, and Messrs. Libby, Williams and Pollard were appointed such committee.

The President: The next business in order is reports of standing committees. I will call first upon the Executive Committee to report.

The report of the Executive Committee was read by William H. Staake, of Pennsylvania, its chairman.

*(The Report follows these Minutes.)*

On motion, the report was received and placed on file.

The President: Is any action needed, Mr. Chairman, on any of the recommendations made in your committee's report?

William H. Staake, of Pennsylvania: I would state that the only matters which would be covered by the adoption of the report, I take it, would be, first, that the committee be empowered to prepare suitable by-laws for the Commissioners as well as for the Executive Committee; secondly, that arrangements for the meetings of this Conference should properly be in the hands of the Executive Committee, and that the executive officers, the President, Secretary and Treasurer, should be added to the committee; third, that a committee be appointed to prepare a suitable minute for adoption by the members of the Conference in connection with the deaths of Judge Brewster and Mr. Dale. I think, sir, I will move that the recommendations made in the report be adopted.

William E. Cushing, of Ohio: I should like to ask a question of the chairman of the committee. I see that the Conference already has rules printed in its report. Was it your recommendation that the Executive Committee be instructed to prepare a substitute for that set of rules?

William H. Staake: The thought of the committee was this. These rules have no reference to the duties of the Executive Committee at all. Also, in comparing the rules of this body with the rather more complete and detailed by-laws of the American Bar Association, it did seem that there was room for improvement in these rules and regulations, and the thought was that the committee might between now and next year submit something which would incorporate all of these rules,

and, in addition, specify what are the duties of the Executive Committee and so on.

The President: In other words, the committee would revise the existing by-laws?

William H. Staake: Yes.

The President: Was it your intention that a constitution should be framed?

William H. Staake: No, sir; simply by-laws.

The question was then put on the motion to accept the report and adopt its recommendations, and it was adopted.

Charles F. Libby, of Maine: The committee appointed to nominate officers is ready to report.

The President: Gentlemen, we will hear the report of the Nominating Committee.

Charles F. Libby: The committee beg leave to report recommending the election of the following officers:

For President: Amasa M. Eaton, of Rhode Island.

For Vice President: Walter S. Logan, of New York.

For Secretary: Albert E. Henschel, of New York.

For Assistant Secretary: J. Moss Ives, of Connecticut.

For Treasurer: Francis B. James, of Ohio.

The report was received, the ballot was thereupon cast, and the officers were declared duly elected.

The President appointed Talcott H. Russell, of Connecticut, to prepare a memorial upon the death of Judge Lyman D. Brewster, and William H. Staake, of Pennsylvania, to prepare a memorial upon the death of Richard C. Dale.

The President then called for the report of the Committee on Commercial Law.

Francis B. James, of Ohio: The Committee will later on have its report ready, but for the present will submit the following communication from the American Warehousemen's Association:

AMERICAN WAREHOUSEMEN'S ASSOCIATION.

Organized October 15, 1891.

Incorporated November 18, 1897.

OFFICE OF SECRETARY, 32-42 EAST 42d STREET, NEW YORK.

1140 Fifteenth Street, September 22, 1904.

*To the Honorable Conference of Commissioners on Uniform  
State Laws, St. Louis, Missouri.*

GENTLEMEN:—The Board of Directors of the American Warehousemen's Association, recognizing the necessity of the codification of the laws relating to warehouse receipts, now in force in this country, and the enactment of the resultant code by the legislatures of the several states of the union, have authorized me, as Chairman of their Committee on Laws and Legislation, to place the matter before your honorable body, in the hope that you will agree with them that such a codification is required, and to donate to you for the purpose of bearing the necessary expense of such codification the sum of \$1500 to be expended under your auspices.

Inasmuch as your honorable body has already had the subject of uniformity of state laws relating to warehouse receipts before it, and has, after consideration, expressed itself in favor of action toward its attainment, it would appear useless for me to enter into argument as to the necessity for the codification recommended, or for the ultimate presentation of the code to the legislatures of the several states for adoption.

Your attention is respectfully called to the fact that the association has, in furtherance of its object, obtained through the Department of State full information in regard to the methods of use, and the value, of warehouse receipts in the principal foreign countries of the world, published in pamphlet form as Special Consular Reports, Vol. XXV, under the title "Stored Goods as Collateral for Loans," and has had compiled for its use the warehouse laws of the several states and the decisions of the courts on warehouse questions, under

the title of "Mohun on Warehousemen," a copy of each of which is herewith respectfully presented to the Conference. A copy of "Mohun on Warehousemen" has been presented to each member of your Committee on Commercial Law.

In the hope that the request of our association may meet with favor, its donation be accepted, and that work on the codification may be begun at an early day, I am

Your obedient servant,

ALBERT M. REID,

*Chairman of Committee on Laws and Legislation.*

P. W. Meldrim, of Georgia: I understand, Mr. James, that you do not propose any action to be taken now in regard to this communication, but simply that it lie on the table to await your committee's further report?

Francis B. James: Yes, sir. The committee has taken the liberty of inviting Mr. Albert M. Reid, the Vice-president of the American Warehousemen's Association, and Chairman of its Committee on Laws and Legislation, to be present, and I request that he be given the privilege of the floor to address us for a few moments on this subject.

The President: I am sure we shall all be pleased to hear from Mr. Reid, and, if there is no objection, the chair would invite Mr. Reid to address us at this time.

Albert M. Reid, Chairman of Committee of the American Warehousemen's Association on Laws and Legislation: Mr. President and Gentlemen of the Conference, I have only a few words to add to those contained in the letter of our association, and these more in regard to the history, or the facts, that have led up to this action of our association than anything else.

Our association, in the first place, is composed of something over one hundred of the leading warehousemen of the country. The warehouse business is becoming daily of very much greater importance. The amount of goods held in the warehouses

that can be used as collateral, and should be properly so used, mount up into hundreds of millions of dollars. The importance of the subject, therefore, is one of very great concern to the commercial and banking world, and in my capacity as a member of our association I am interested on the warehouse side, and in my position in a large trust company at home I am interested on the banking side. Four years ago when our Committee on Laws and Legislation was formed I was made its chairman and I was directed by our association, because I knew nothing of law and had no training in that direction, to write for the association a uniform law covering warehouse receipts. Out of my ignorance, and hoping to do something in the future, I studied up the matter in most of the states and found that there was no uniformity in them and that I could find no facts or very little of the decisions of the law by a compilation of the laws and decisions governing warehouse matters. The association has expended under my recommendation something over \$3000 in compiling and printing a volume of 963 pages of the laws of the different states of the union and the decisions of the courts under those laws. So that we think we have now material to present to your Conference upon which a codification of the laws could be properly made. In addition to that we went to the State Department and, through the kindness of Secretary Hay, we have obtained from the consular officers of the United States, in Europe especially, and from Asia and Africa to some extent, a description of their methods of use of the warehouse receipts in commercial matters, and those have been printed. I hoped to have them with me. I sent them by express to the chairman of your committee, Mr. James, but they do not appear to have reached here yet. A copy of that consular report can be had by the members of the conference if they wish it, and I have a large number of the copies of our volume "Mohun on Warehousemen," which have not been sold to date.

We are not only willing to donate to you the \$1500, as this letter has given you notice, but we are willing to do anything

else that we can to bring about so desirable a result as to give us commercially as warehousemen a law that will be as good in one state as in another in its effect upon the warehouse business of the country. As we are to-day, each of the states, or a large number of the principal states, have laws that conflict with laws of other states. The decisions conflict, and, as our business is very largely interstate instead of state, the effect is often disastrous upon warehousemen and it has limited very largely the use of warehouse goods as collateral. In fact, we have no good method by which we can borrow money in New York on goods that are warehoused in Chicago, St. Louis or other places, and we wish especially to stop a system of warehousing that is getting in vogue that leads entirely in the wrong direction. For instance, and I think probably when it comes to the attention of the courts it will be stopped, there has been a system of loaning on goods following this procedure. A warehouseman of that class finds a lot of pig iron in the yards of the manufacturer. The manufacturer has no sale for it and he wishes to use it as collateral. It is large, bulky goods and moved only at great expense. The warehouseman rents from the manufacturer a section of land, places a man in the neighborhood in charge of the iron and constitutes that land a warehouse; then issues a warehouse receipt upon it, turning it over to a bank or trust company and the owner secures a loan upon goods that are virtually in his own possession. We have another form that is at least dangerous to the banking community and that is where warehousemen are loaning money upon goods within their own warehouses and then using the warehouse receipts, that same collateral, to borrow money of the banks for the purpose of loaning to others. A great many of these mushroom growths are coming up in the United States simply from the lack of a uniform and straight method of procedure. Bankers are being led to suspect the validity of warehouse receipts, and we have never, except through the integrity of the warehousemen and their financial ability, been able to make warehouse receipts of any use in the commercial world. If a



warehouseman has a good reputation in the community, his warehouse receipt is accepted; if he has not such a reputation, his warehouse receipt is rejected. In European countries they not only have governmental supervision of warehouses to the extent of finding out the responsibility of persons, but a bond in proportion to the amount of business done is exacted, and care is exercised over all the workings of the warehouses. So that in France, in Austria-Hungary, in Amsterdam and in a great many of the ports and countries of Europe the warehouse receipt is a better evidence of value and a better collateral in the banks than a man's personal note even when signed by an endorser.

The President: If there is no objection, the communication that has been read and the matter it relates to will be referred back to the Committee on Commercial Law in order that they may report to us a proper resolution recognizing and accepting the gift.

Is there any report from the Committee on Wills, Descent and Distribution?

The committee made no report.

The President: The Committee on Marriage and Divorce?

The committee made no report.

The President: The Committee on Conveyances, Depositions and Proof of Statutes of Other States?

William E. Cushing, of Ohio, Chairman, presented the report of this committee.

*(The Report follows these Minutes.)*

On motion of P. W. Meldrim, of Georgia, the report was received and placed on file, and its recommendations adopted.

The President: The Committee on Insurance.

Charles F. Libby, of Maine: I have no special report to make. It will be remembered that a minor act relating to insurance has been recommended by the Conference. I was somewhat active in procuring the recommendation of that act,

but I regret to say that my attempt to pass it through the Maine legislature simply illustrated the power of insurance companies when they are united either to effect or oppose legislation. I have a very profound respect for that power. It was an attempt, you remember, to restore the right of trial by jury on questions of loss by fire under insurance policies which had been taken away furtively by the passage of the so-called Standard Policy Act in the different states. I do not think the fight has altogether reached its finish, perhaps, in the State of Maine, and I do not know what the fortunes of that act have been in any other state; but it raises a very important question because it is the first successful attempt made by insurance corporations to evade jury trials on the question of damages—one of all others which it would seem ought, under our system of procedure, to be settled by a jury. It has been practically taken away and a forced reference made of that question. I suggested to the judiciary committee of the Maine legislature that I represented some corporations which, if that rule should be adopted, would be very glad to have it applied to them, among others street railroad corporations; but, in some way or other, while there was no very good argument made before the judiciary committee, there were arguments made in the lobby that seemed to have very great effect, at least sufficient effect to prevent a successful report on the bill. As illustrating some phases of this legislative work, I would say that that bill repealing that portion of the insurance law went through the senate after a very warm and thorough discussion of the merits; was reconsidered when the absent members returned the following week and defeated in the senate, and did not get practically more than the concurrence of the house. I had supposed, in my innocence, that the right of trial by jury was one of the fundamental rights upon which Americans all were agreed.

The President: I would inquire of the gentleman from Maine whether, in his opinion, that legislation will stand if it is contested?

Charles F. Libby: I suggested that the act was not constitutional, and it troubled them so much that they referred it to our Supreme Court and our Supreme Court dealt with the matter in such a manner that I confess I am unable to say what they really meant. They sustained my objection, but they said that the legislature had a right to deal with the creations of the law, its own creatures, and that this act only touched corporations who sought to effect contracts of insurance in our state, and that they had a right to say in our state what the form of that contract should be. I said that might be so, but that there seemed to me to be a grave constitutional question whether they could, in the face of our constitution, say that that contract should be in a form that deprived the contracting party of a constitutional right, the constitution of the State of Maine being very definite in protecting the right of trial by jury as hitherto used. Well, the answer was further: Nobody is obliged to take out insurance with a corporation; they can have it underwritten. I said that may be theoretically true, but there are no underwriters of insurance in the State of Maine except corporations, and when you say we may obtain insurance elsewhere you are stating something that is not a fact; it cannot be done, and it is an absolute necessity in the business world for a man who is doing a large business to take out insurance. This only illustrates, I am inclined to think, how far the corporate influences unconsciously extend or may affect the attitude of even the courts. I would say, with all modesty, that I have been unable to appreciate the decision of the Supreme Court of Maine where I was the humble instrument of having the question referred to it, but I want to express my very great respect—awe, I might say—for the power of the insurance commissioner of Maine and the companies that are doing business in my state. I tried to speak plainly, and I think I did, before the committee on insurance of our legislature, but I could not convince unwilling listeners. However, I am inclined to think that it may not be the last of the matter.

I should be glad to know whether that act has come before any other legislature, and, if so, what has been its fate. It raises a very important question, it seems to me, for if these favors are to be extended to one class of corporations I think fair dealing should lead to their extension to those corporations in which I have a more direct professional interest, although I may say that I have also defended insurance companies.

W. O. Hart, of Louisiana: I would say that in Louisiana the matter was brought before our board, but as we had more pressing business to attend to at the time it was not given attention. We are going to consider it, however, and probably at our next meeting I shall be able to announce what position we take in regard to it.

The President: It is to be hoped that the committee on that subject will, by another year, be able to report what, if any, action has been taken by the various states of the union.

The next committee to report is the Committee on Congressional Action. The chairman of the committee is not with us. Mr. Logan is next on the committee and I will call upon him for a report.

Walter S. Logan, of New York: That committee has not been called together during the year. Our chairman, I believe, is in Europe, and I know of no report that the committee can present.

The President: The Committee on Appointment of New Commissioners?

The committee made no report.

The President: The Committee on Purity of Articles of Commerce?

William H. Staake, of Pennsylvania, chairman of the committee, presented the report of the committee.

*(The Report follows these Minutes.)*

On motion of Robert W. Williams, of Florida, the report was received and placed on file, and its recommendations adopted.

The President: The Committee on Uniform Incorporation Law is next in order.

Walter S. Logan, of New York, chairman of the committee, presented the report of the committee.

*(The Report follows these Minutes.)*

On motion of Francis B. James, of Ohio, the report was received and placed on file, and the committee continued.

P. W. Meldrim, of Georgia: Does the action we have just taken include the endorsement by this Conference of a national incorporation law? I have no objection to the report being received and filed, but there might be a serious question as to how far we are prepared to advocate the passage of a national incorporation law dealing, of course, with matters of interstate commerce.

Walter S. Logan: I should hardly ask the members of the Conference to express their approval of a national incorporation law without more deliberation than we can give to the subject to-day. The object of the committee now is simply to bring before the Conference this report and let it take the usual course.

The President: Of course our action in receiving and filing the report does not involve the adoption of any of its recommendations. Indeed, it may be beyond our province even to make any such recommendation.

Are there any special committees to report?

The Committee on Uniform System of Accounting in State and Municipal Affairs.

William H. Staake, of Pennsylvania, read the report of the committee.

*(The Report follows these Minutes.)*

On motion of Robert W. Williams, of Florida, the report was received and filed, and its recommendations adopted.

The President: Next and last is the Committee on the Torrens System of Registration of Titles to Land. The

chairman of the committee, much to his regret, as he expressed it to me a few days ago, is unable to be present.

W. O. Hart, of Louisiana: As a member of that committee I desire to offer this resolution:

*Resolved*, That so much of the President's annual address as refers to the Torrens System be referred to the committee on that subject, with authority to carry out the recommendation of the President, if found to be desirable, and report to the next annual meeting.

I would add that the bill referred to in our President's address was introduced in the Louisiana legislature and passed, and the governor was authorized to appoint a committee to report to the next session of the legislature, which will meet in 1906.

Francis B. James, of Ohio: Do I understand that the committee has power to act on the recommendation? because that carries with it the expenditure of \$1000, and we have not \$1000 to spend for that purpose.

W. O. Hart: I am very frank to say that I do not think we shall reach that point within the next year.

The President: Of course no committee to whom the subject is referred will have power to take any action involving the expenditure of money unless it sees where the money will come from; and even if they should be given such authority it does not follow that they will incur such expense all in one year. This is the same action that we have taken upon other subjects where the necessary expenditure has been cared for gradually.

Francis B. James: My recollection is that in every case heretofore we have employed an expert and that the committee has never received power to act, but has always made its recommendations to the Conference. I am opposed to this resolution, first, because it gives the committee power to employ an expert, and secondly, to expend \$1000; for I do not think the Conference should be bound for the expenditure

of money or the employment of an expert until the matter has first been referred back to the Conference.

Charles F. Libby : I think that is right.

Thomas J. Kernan, of Louisiana : Mr. President, I should like to ask what your recommendations were to which this resolution refers ?

The President : That the committee be empowered to examine into the subject and report next year, and in the meantime to employ an expert to draft a bill at an expense not to exceed \$1000.

Thomas J. Kernan : And is it proposed to limit the inquiry to the Torrens System of land registration, or is it to include all other systems ?

The President : The resolution does not mention any others.

Thomas J. Kernan : I myself think that the Torrens System would be wholly inapplicable to any portion of a state where a very accurate survey did not exist.

W. O. Hart : In the light of what has been said, Mr. President, I withdraw my former resolution and will offer the following :

*Resolved*, That so much of the President's annual address as refers to the Torrens System be referred to the committee on that subject, the committee to report at the next annual meeting on that system and other systems of land registration.

Thomas J. Kernan : I will second the resolution as now worded.

The resolution was adopted.

James Barr Ames, of Massachusetts : I desire to offer the following resolution :

*Resolved*, That so much of the President's annual address as refers to Marriage and Divorce be referred to the Committee on Marriage and Divorce with instructions to report at the next Annual Conference.

I understand this does not carry with it the expenditure of any money or pledge the action of the Conference.

Francis B. James, of Ohio : I second the resolution.

The resolution was adopted.

Francis B. James : Mr. President, there are only two members of the Committee on Commercial Law present, and it is the desire of Professor Ames and myself that you add three members to the committee so that the committee may have a quorum.

The President : Following the suggestion, I will appoint Messrs. Charles F. Libby, John Garland Pollard and P. W. Meldrim.

Francis B. James : I will request the members of the Committee on Commercial Law to meet immediately upon our noon recess. We shall probably be ready to make a partial report this afternoon, but before finally reporting on the draft of the Sales Act the committee desire that it shall be taken up in the conference with Professor Williston and fully discussed by the members.

Walter S. Logan : I move that in place of the action that was taken in reference to the report of the Committee on Uniform Incorporation Law the following resolutions, which I think cover the objections made, be adopted :

*Resolved*, That this Conference approve and adopt the report of the Committee on Uniform Incorporation Law with the exception of that part of the report recommending the passage of a national incorporation law ;

*Resolved, further*, That the consideration of the committee's report, so far as it relates to the passage of a national incorporation law, be laid over until the meeting of the Conference next year.

W. O. Hart, of Louisiana : I make the objection, Mr. President, that the gentleman is out of order. He should first move to reconsider the action already taken.

Walter S. Logan : I stand corrected, sir. I move that the Conference reconsider the action taken this morning relative to this report.

The motion was seconded and adopted.



Walter S. Logan: And now I move the adoption of the resolution I have just read.

P. W. Meldrim: I second the resolution.

Francis B. James, of Ohio: I move as an amendment to strike out the second clause of the resolution, because this Conference has not the power and ought not to attempt to deal with national legislation. It is not within our province.

The President: I desire to say a word on this subject, and I will ask Mr. Cushing to take the chair.

I hope Mr. James's amendment will not be adopted. Professor Wilgus is to address us on this subject and it seems to me it is rather scant courtesy to him to dismiss the whole subject before we hear him. I think it would be much more polite to hear Professor Wilgus and learn what he has to say, and then, if we wish, to defer further consideration until next year, and it does not follow that because we defer it that we shall then take it up and act upon it. But at least the subject should not be disposed of until we have heard Professor Wilgus, who comes here at our invitation to address us.

Francis B. James: I do not want to be understood as objecting to hearing Professor Wilgus. On the contrary, I want to hear him because his speech on national legislation will throw light on state legislation. But I am consistently opposed to our taking up subjects of national legislation. And why carry it over until next year when the matter can and ought to be taken out of discussion now forever?

Charles F. Libby, of Maine: It often happens that you cannot discuss a large subject embracing wide circles without treading in primary circles to a certain extent. I think it is apparent to all of us that we cannot have any effective control over the large corporations of this country without congressional action, and yet state action may be obliged to follow in the line of congressional action. For that reason, if we are to consider this subject at all this committee should be left free to deal with it in a large way; remembering, however, that

so far as this Conference is concerned it can only recommend laws to be adopted by the several states. It seems to me, therefore, that it is essential that the whole subject should be left before them for consideration; not necessarily for us to recommend legislation covering the whole subject, but in order to see what is appropriate legislation for the several states. For that reason, while I have no hard and fast notion on this subject, which is so troublesome and complicated, I would in no wise narrow the powers of this committee, which I think is so constituted as to deal in a wise manner with the whole matter and is fully aware of the limitations of any action of this Conference.

Thomas J. Kernan, of Louisiana: I fully endorse everything said by Mr. Libby. I think the subject is far and away the most important this Conference could consider, and I think that we could not start out with the proposition that the powers of the Conference—which are purely advisory and are not binding at all upon any legislative body—with the narrow proposition that we could not, if we thought an act of Congress would promote uniform legislation among the states, recommend Congress to pass such an act. Why, sir, it seems to me that it is directly in line with the powers and purposes of this Conference. I believe, with Mr. Libby, that a congressional act on this subject would do more to promote uniform legislation among the several states than any other one thing possibly could. I think it is important that it should be considered by the committee and given full consideration by this Conference. I think further, as the President suggested, that we should be lacking in courtesy to the gentleman who is to address us on this subject if we were to act as Mr. James's amendment provides.

John Garland Pollard, of Virginia: I move that we postpone further discussion until after we hear Professor Wilgus.

The President: By common consent this matter will lie over until we shall have heard Professor Wilgus.

It was voted that the hours of the conference be from 10 A. M. to 12.30 P. M., and from 2 P. M. to 5 P. M.

A recess was then taken until 2 o'clock.

*Thursday, September 22, 1904, 2 P. M.*

The President: We meet this afternoon to take up the Sales Act. I will call on Professor Williston, of the Harvard Law School, who has had the matter in charge.

The draft of the Sales Act was then taken up and its provisions discussed in detail and amendments were made.

Francis B. James, of Ohio: Our Committee on Commercial Law has drafted a report bearing on the subject of warehouse receipts.

Your Committee on Commercial Law beg leave to recommend the adoption of the following resolution:

*Resolved*, By the Conference of Commissioners on Uniform State Laws at its meeting held this 22d day of September, 1904, as follows:

*First*. That the donation of \$1500 from the American Warehousemen's Association for the purpose of preparing a code on warehouse receipts be accepted, and that a vote of thanks be tendered to the American Warehousemen's Association for its interest in this work.

*Second*. That Mr. Barry Mohun, of the Washington Bar, and Professor Samuel Williston, of the Harvard Law School, be and they are hereby employed as experts to prepare said code under the guidance and direction of the Committee on Commercial Law; that the compensation of Mr. Mohun be fixed at \$500 and the compensation of Professor Williston be fixed at \$1000, and that said sums shall be paid in instalments to said experts as directed by the Committee on Commercial Law.

*Third*. That after said uniform bill shall have been prepared the Committee on Commercial Law shall send copies of the same to experts on the subject throughout the United States,

including all teachers of law, especially teachers of the law of sales, leading practitioners and other persons interested in the subject inviting such persons to make criticisms, amendments and suggestions.

*Fourth.* That said Committee on Commercial Law shall report such uniform bill, together with said criticisms and amendments, at the next meeting of the Conference.

The report was received and adopted.

The Conference then adjourned to Friday, September 23, 1904, at 10 A. M.

*Friday, September 23, 1904, 10 A. M.*

The President: I remember that a few years ago at one of the meetings of the American Bar Association some member proposed that we should apply to Congress to incorporate the American Bar Association, to which someone remarked that Congress had no power to grant such a charter. That led me to look into the subject a little, and I was surprised to find how few charters have been granted by Congress. Of course it has granted some charters under the express powers given it by the Constitution of the United States, and there can be no question of its right so to do, but the question arises as to what power Congress has to grant charters of incorporation generally. The conclusion that I came to was that it certainly has the same power that any other legislature has without specific mention of that power in the Constitution where the object sought is of a national character, such, for instance, as the incorporation of the American Bar Association, and Congress has exercised such power in perhaps half a dozen instances, but in almost every case it has been coupled with a proviso that the incorporation should have a business office in the District of Columbia, seeming thereby to hedge a little, as if Congress was doubtful of its powers, unless it was in the exercise of the power to incorporate in the District of Col-

umbia, over which, of course, it is supreme and has all the powers that a legislature has in a state. That, perhaps, gives rise to the question as to what is the power to incorporate; What does it come from? What is its nature? Is it a sovereign power? And on that subject you may remember that I had the honor and pleasure of reading a paper before the American Bar Association two years ago. Without going into the matter at any length now, the general conclusion that I came to was that the power to incorporate is not the exercise of any national power. It was formerly exercised in England by lords of manors, and the current notion that it is a national power or a state power does not seem to be founded upon a knowledge of the history of the matter. I take it, therefore, that Congress has a general power to incorporate. If it has not we are certainly led into some very curious conclusions. Congress, for instance, incorporates a new territory. That territory elects a legislature, that legislature proceeds at once to incorporate all sorts of corporations of a business, a private and a *quasi* public character. Now the territorial legislature gets the power to incorporate because it is itself incorporated by an act of Congress. If Congress has no power to incorporate these different kinds of corporations, where does the territorial legislature get its power? If you conclude that the territorial legislature has that power and Congress has not, then you make the creature greater than the creator, and certainly we cannot stand by any such illogical result as that.

This morning we are to hear from Professor Wilgus on one particular branch of this topic, the power of Congress to pass a general national incorporation act, and it would seem certainly that there can be no question of the power of Congress to create corporations that shall engage in interstate commerce, because that power is specifically lodged in Congress by the Constitution of the United States; and it is on this particular subject that we are this morning to hear from Professor Wilgus. I

take pleasure in introducing to you Professor Horace L. Wilgus of the Michigan Law School.

Horace L. Wilgus, of Michigan, then read his paper.

*(The Paper follows these Minutes.)*

The President: We have listened to a very instructive and valuable address, and now we shall be glad to hear any discussion of the subject.

Walter S. Logan, of New York: I do not care to discuss this address, and if no one is to discuss it I would like to call up the resolution of the Committee on Uniform Incorporation Law in relation to their report which is now on the table and which was postponed until after the reading of Professor Wilgus's paper. I do not think the resolution is subject to the objection that Mr. James made; I think he will see that it is not on reading it. The first part of the resolution simply approves the general features of the report which are in line with the address of Professor Wilgus, and the second postpones any discussion upon the other features of it until the next meeting of the Conference. The report of the committee does not, in any way, propose that this Conference shall father a national incorporation law. The report shows the need, as Professor Wilgus does, of unifying corporation laws throughout the United States; and it shows, also, that there is no practical way of securing that uniformity except by the passage of a national incorporation law in the first place. I think we all agree that the project of unifying the laws one by one here would be impracticable. The Committee on Uniform Incorporation Law have simply wrestled with the subject as they found it. We found it impracticable to draw a state law until the United States has done what it is going to do in the matter, and we say so, and we show the necessity of a national incorporation law. We do not say that this Conference should undertake to do that. We simply state that as a part of the literature on the subject. We could not make a report showing the necessity of unifying the state laws without showing the necessity of a national incorporation law. If the Con-

ference thinks there is anything of value in the report, so far as it shows, as Professor Wilgus has also shown, the evil of the present diversity of corporation laws in the states and the necessity of unifying them, if possible, I think it should be adopted so that it should be the voice of the Conference. If the subject is to be discussed, the Conference will take its own time for discussing it. I simply want to leave the report open so that if that subject does come before the Conference the report will come with it.

Francis B. James, of Ohio: I would like to have the resolution read.

The President: The resolution is as follows:

*Resolved*, That this Conference approve and adopt the report of the Committee on Uniform Incorporation Law, with the exception of that part of the report recommending the passage of a national incorporation law.

*Resolved, further*, That the consideration of the committee's report, so far as it relates to the passage of a national incorporation law, be laid over until the meeting of the Conference next year.

Francis B. James: I believe I have a motion pending that the second resolution be stricken out, which motion I now renew.

The President: Mr. James renews his motion that the second resolution be dropped. Is that seconded?

W. O. Hart, of Louisiana: I second that motion.

Francis B. James: We are here representing the states endeavoring to procure uniform state legislation and not national legislation. To be sure, we receive no salary, but the state does pay all our expenses, at least, my own State of Ohio does; it pays our traveling expenses, our hotel bills, our clerk hire and our printing bills, and out of the money appropriated to us by the state we have had some left over, which we turned in to the general fund to help defray the necessary expenses of this Conference. Now, it is not honest to the State of Ohio, in my opinion, for me to sit here and discuss national legislation,

and I have raised my voice in protest every time it has been proposed that we should spend time in discussing national legislation. Furthermore, this Conference consists of representatives from only about thirty states; there are not representatives here from the forty-five states of the union. Indeed, today we have representatives present from less than thirty states, and we ought not to propose to Congress, which legislates for all the states, recommending national legislation. I want to say, furthermore, that as a member of the Executive Committee I was opposed to having Professor Wilgus come here and address us upon the subject of national legislation. I was in favor of hearing an address from him on the subject of a proposed codification of the law of corporations, which might be a model for making uniform the law relative to private corporations, and for the purpose of illustration, I saw no objection to the use of the subject of national legislation. So far as the views of Professor Wilgus are concerned, I am heartily in favor of them, but I think the magnificent address that he made to us ought to have been made before the American Bar Association. I agree with all of his conclusions. I believe the proposed resolution ought to be adopted by the American Bar Association, but not by this Conference. I think, in view of important business that we have under consideration, we should devote our time exclusively to debating subjects which are within our province. I think the Committee on Public Accounting and the Committee on Purity of Articles of Commerce have well expressed these views in their reports, one of which was adopted by this Conference yesterday. I cannot now quote the language which Mr. Staake uses in his report, but it is to the effect that it is doubtful whether this Conference should adopt resolutions bearing upon national legislation. I think the records show that I have taken the same position in every Conference, that we should not consider here matters of national legislation.

W. O. Hart, of Louisiana: To quote the language of a famous man, What are we here for? We are here, it seems to me, to



report back to our respective states some recommendations which our states can act upon. If that is not the purpose of this Conference, then we may as well dissolve. In our state, and I presume in many other states, we are required to make a report to our general assembly at each session of what we have done and what recommendations we are prepared to submit to the legislature. I say that unless that is the purpose of the Conference we have no place in this country. We do not want to organize a moot court. We do not want to discuss questions that, while they may be living questions, die upon our hands. When we go back to our respective states, what can we say to them? Well, we have discussed a national incorporation law; we have come to the conclusion that it is a good thing. But that is as far as we can go. Can we ask our states to pass that law? Of course they have no such power. As Mr. James has well said, there are many questions that we can discuss. In the end, no matter what our conclusions may be, they can never be the basis of any recommendation by us to the power which created us. If we discuss the national incorporation law next year, all we can do is to say that it is a good thing, but we cannot go back to our state and show anything which our state, in common with the other states, would be called upon to adopt as a uniform law. Therefore, as long as we have something before us to discuss, which may go to the state as a basis for the adoption of some uniform law, I say we should not waste our time, because it is a waste of time when the result of it can accomplish no useful object, in discussing what after all is merely a moot question.

P. W. Meldrim, of Georgia: I think we could shorten this by dividing the question.

The President: I would like to say a word upon this, and I will ask Mr. Williams to take the chair.

Robert W. Williams, of Florida, took the chair.

President Eaton: I move to amend as follows:

*Resolved*, That the consideration of the committee's report, so far as it relates to the passage of a national incorporation law, be referred to the consideration of the Committee on Uniform State Laws of the American Bar Association.

This will dispose of the question so far as we are concerned, and refer it to a committee which has nothing to do and to whom it is perfectly proper the subject should be referred.

P. W. Meldrim : Why do that when the very same subject is to-day before two committees of the American Bar Association ?

Francis B. James, of Ohio : What right have we to refer anything to a committee of the American Bar Association ? We can refer it to the American Bar Association itself, but not to one of its committees ; that is not our province.

President Eaton : Then I move it be referred to the American Bar Association.

Francis B. James : I have no objection to that.

President Eaton then resumed the chair.

Charles F. Libby, of Maine : I do not understand that the question before us is as Mr. James understands it. It seems to me the real question is the courtesy due to a committee of this Conference. The chairman of that committee has stated that it is not the intention of his committee to undertake to deal with a national incorporation act. But we are confronted here with a condition, not a theory. As a matter of fact, state corporations are carrying on interstate commerce, and they are encroaching upon federal rights, and we are undertaking to deal with a difficult and complicated question as to how the states can limit the creatures of their creation and keep them within their legitimate bounds, and yet we cannot consider a question like that without considering what are the powers of the general government to deal with them and what the general government ought to do and what is left for the states to do. Now I am opposed to crippling the powers of any committee of this Conference in dealing with a large and troublesome subject like this. If the Committee on Commerce wishes to consider this question further, it seems to me that the ques-

tion before us is, Shall we leave the committee to consider the subject further within the legitimate limits in which we can act? Now we are making a motion which practically undertakes to bind hand and foot that special committee of this Conference. The committee is asking to be left to consider this matter further, which involves indirectly a national incorporation act; not that they intend to prepare one, but I am taking the declaration of the chairman of the committee as to what his purpose is.

Francis B. James, of Ohio: Let me ask you a question. Are we bound by the remarks made or by the language of this resolution?

Charles F. Libby: I think the remarks made construe this resolution.

Francis B. James: But there is no ambiguity in the resolution to be construed.

The President: It is simply a resolution of postponement; that is all.

Charles F. Libby: I protest against crippling the committee. I do not disagree with many of the sentiments expressed here as to what the scope of the powers of this Conference is, but in considering what is a wise uniform state law, in dealing with a subject that has a double aspect, federal as well as state, you may have to consider incidentally the federal side of the question. There are a great many subjects which are affected by state legislation, and we can take up the minor subject, or we can, I suppose, deal with some of the larger ones. Mr. Logan is just as well aware as any other member of this Conference that he cannot report and recommend a national incorporation law, but he has to consider what the limitations of congressional action are in order to reach the limitation of state action, and it is a troublesome subject, and I say the committee ought to be left entirely free and with no fixed declaration on our part as to exactly what they should or should not do.

Francis B. James: I want to correct Mr. Libby. The Standing Committee on Uniform Incorporation Law, after discussing the subject, have a heading "Remedy," and under it they have this language: "The first thing to be done is to secure the passage by Congress of a national incorporation law." Then they go on and indorse Professor Wilgus's proposed legislation. Now this resolution says:

*Resolved, further,* That the consideration of the committee's report, so far as it relates to the passage of a national incorporation law, be laid over until the meeting of the Conference next year.

I am opposed to laying it over for the reason that at our next meeting we will then be taken to a discussion of whether we should or should not advocate the passage of a national incorporation law. I say we should kill it now.

W. O. Hart, of Louisiana: Would not the adoption of the committee's report, even now or next year, commit this Conference to a national incorporation law?

Francis B. James: Yes, sir; absolutely so. Mr. Libby has suggested that this Conference ought not to bind its committee hand and foot. I am in favor of binding every committee so that they will not go on year after year submitting reports to this Conference on subjects of national legislation with which we have nothing in the world to do.

Charles F. Libby, of Maine: I think the remarks of Mr. James show that it is somewhat a question of temperament between us.

Francis B. James: Personal equation, if you please.

Charles F. Libby: Well, we will call it that. Now suppose this committee should say next year that it is not worth while considering what would be wise uniform state legislation on this subject until Congress has spoken. We know exactly the extent to which Congress is disposed to go in its undoubted powers in legislating on this subject. Now, should it not be left to the committee to say whether they arrive at that conclusion?

Francis B. James: Why not let the Conference say so now?

Charles F. Libby: Because the committee have not so reported, and it is foolish to attempt to limit the committee.

Thomas J. Kernan, of Louisiana: It seems to me that the discussion of this subject has gotten into very narrow limits. We are dealing with a very large question, perhaps the largest presented in modern times, and we ought to deal with it in a large way. If the deliberations of this body can in any way contribute to the solution of the question I am in favor of this Conference taking it under consideration. Of course, technically speaking, we are here for the purpose of recommending uniform laws for adoption by the legislatures of the different states. We are here also to promote in every legitimate way uniformity of legislation by the different states. It may well be, and I believe it is a fact, that Congress could pass an act that would have more effect in promoting uniform state legislation on this subject than any other agency, or, I might say, than all other agencies. I do not understand that the committee is asking for time to consider a particular national incorporation act which shall provide that no corporation shall engage in interstate commerce unless it is chartered by the federal government. It might be that this committee would recommend that Congress be memorialized by the various states which we represent to pass some act prescribing the qualifications of state corporations before they could engage in interstate commerce. That would certainly have the effect of making all corporations that desire to engage in interstate commerce square up with the congressional requirements, and, to that extent, promote uniform state legislation. I think that is the proper view to take of it. I think no possible harm could be done by permitting this committee to recommend at the next session of this conference such national legislative action as would have the effect of promoting uniform state legislation upon this great subject.

The President: Agreeing as I do with what Mr. Libby and Mr. Kernan have said, I wish to withdraw my amendment, and

it seems to me proper that we should not only continue the committee, but continue the subject in their hands; and that is all this resolution proposes. It simply continues the subject in order that the committee may get further light upon it, and then with further knowledge make such further recommendations to us as they may deem proper.

W. O. Hart: The committee has made a final report and a recommendation, and the resolution now carries that recommendation over for our consideration next year. The committee practically discharges itself by its report, and asks us to take up a report next year and then adopt or reject the recommendation which the committee makes. It is not a recommitment of the report and a continuance of the committee; it is a final report by the committee, and, instead of discussing that recommendation today, we are asked to discuss it next year.

The President: As the committee itself asked that that course be taken I think we should follow their recommendation.

The Secretary: A question of a radical nature has been presented as to what we are here for. I believe Mr. James is mistaken in his statement of the real object for which this Conference was formed. The object of the appointment of commissioners to this Conference was to secure uniformity of legislation among the states, but the reason behind that object was to secure a remedy against the conflict of laws. Now the chief reason for the conflict of laws lies in the diversity of state legislation. If we find that we can secure uniformity where there are dual jurisdictions in matters of commerce where both the state and the federal government may enact legislation, and we can further the objects of preventing a conflict of laws upon those subjects we have a right, and I believe it is our duty, to use the most efficient means within our control to attain that end. It is true that our chief object is to take care of diversity in state legislation. I am not in favor of taking up matters of national legislation generally as matter of policy and wisdom. It is true we have enough to do

respecting matters of state legislation, but I think we should not limit ourselves, as Mr. James suggests, and say that we cannot go beyond state legislation. Our aim should be to secure wise laws operating uniformly throughout the United States. If that result can be most readily attained in some instances by national legislation, I see no harm in resorting to it. It may not be amiss for me, as the author of this movement for securing uniformity of legislation, to say that the chief motive for suggesting the necessarily cumbrous method of separate state action was that many of the evils arising from the conflict of laws could not be reached by Congress. The states had consequently to be appealed to where Congress could not act. I do not deem it at all antagonistic to the spirit of our Conference to seek to procure harmony and uniformity in our laws by means of national legislation, wherever that course is clearly permissible under the United States Constitution, and otherwise appears to us expedient and desirable. Before this Conference finally adjourns I intend to suggest that we make an appeal to Congress for money to help us in our work. I think Congress ought to give us some aid. It is rather a humiliating situation to have to accept money from a private organization, as we have done, to enable us to draft a law with regard to warehouse matters.

William E. Cushing, of Ohio: I should like to offer a substitute for the whole series of motions before us. Of course we know by experience that this question of the proper scope of this Conference comes up every year and is discussed, and any vote which might be taken today on this subject as to the scope of the powers of this Conference would not be binding upon any future Conference. Personally I should feel embarrassed at having this Conference adopt any vote which sounds like an approval of this particular report or any detail in it. I hope it will not be insisted upon, because I think the whole subject can be covered in another way, and I move as a substitute that the report of the committee be received and filed, and that the committee, which is one of the

regular standing committees of this body, be requested to continue its consideration of the subjects indicated by its title in such manner as it may deem best.

James Barr Ames, of Massachusetts: I second the adoption of that substitute.

The President: Is there any discussion?

Francis B. James: I am opposed to this substitute because it carries the subject over until the next meeting.

James Barr Ames: I seconded it because I wanted to save a little from the wreck of this day, and our time is passing without accomplishing anything.

P. W. Meldrim, of Georgia: In order to cut off debate, I move that we postpone this subject indefinitely.

Francis B. James: I second that motion.

Charles F. Libby: That will leave the report of this committee in the air.

P. W. Meldrim: Yes, sir.

The President: Do you offer that as an amendment, Mr. Meldrim?

P. W. Meldrim: No, sir; I offer it as an original motion, which is in strict conformity to parliamentary procedure. The report has been received and filed.

W. O. Hart, of Louisiana: No, it is not received.

P. W. Meldrim: I have moved to postpone indefinitely, and that cuts off all debate and will dispose of the matter.

The President: Shall we not arrive at that result sooner if we take a vote upon Mr. Cushing's substitute?

P. W. Meldrim: I insist upon my motion, sir.

The President: Very well. The question will be put to vote upon the motion to postpone indefinitely, made by Mr. Meldrim.

Charles F. Libby: I want to inquire of the chair where that will leave the report?



The President: It will leave it on the table.

Charles F. Libby: Oh, no; it will not. The report has not yet been received.

P. W. Meldrim: After my pending motion is disposed of I will move to receive the report.

The President: The chair understands that if the motion made by Mr. Meldrim prevails it will postpone indefinitely the consideration of the resolution.

Mr. Meldrim: That is the object I had in view in making the motion.

The President: And it will leave the report of the committee on the table. The chair will put the question with that understanding.

The motion to postpone the resolutions indefinitely was adopted by a vote of nine to six.

Francis B. James: I now move that the report be received and filed.

This motion was seconded and adopted.

A recess was then taken until 2 P. M.

*Friday, September 23, 1904, 2 P. M.*

The Sales Act was again taken up and its provisions discussed in detail and amendments were made.

The Conference then adjourned to Saturday, September 24, at 10 A. M.

*Saturday, September 24, 1904, 10 A. M.*

The discussion of the Sales Act in detail was continued and amendments were made.

The President: We will have to take a recess now until 2 o'clock.

Walter S. Logan, of New York : Before recess there is one thing I want to present. Mr. James and I have agreed upon the resolution in relation to the report of the Committee on Uniform Incorporation Law, and I therefore move to take from the table the subject which was indefinitely postponed yesterday and to offer as a substitute for all the resolutions and amendments the following :

*Resolved*, That this Conference appreciates the evils resulting from the diverse corporation laws of the various states, as set forth in the report of the Committee on Uniform Incorporation Law, as well as the importance and necessity for the unification of such laws in so far as the same may be practicable ; and the committee is requested to continue its work in the line of such unification and to report further on the subject at the next meeting of the Conference.

Francis B. James, of Ohio : I move the adoption of that resolution.

The motion and the resolution were seconded and adopted.

A recess was then taken until 2 P. M.

*Saturday, September 24, 1904, 2 P. M.*

The President : I have received the Treasurer's report from Mr. Ives with the request that I submit it to the Conference.

REPORT OF THE TREASURER OF THE NATIONAL CONFERENCE  
OF COMMISSIONERS ON UNIFORM STATE LAWS.

For the year ending September 30, 1904.

*Receipts.*

From the State of Ohio . . . . .	\$50 00
From the State of Rhode Island . . . . .	73 00
	<hr/>
	\$123 00

*Expenditures.*

For printing annual report . . . . .	\$85 00
Expense of sending out copies of report to members and others interested in work of Conference . . . . .	7 58
Sending out reports to various state legislatures by mail and express in response to requests from law libraries, etc. . . . .	11 63
Paid A. M. Eaton for postage . . . . .	10 00
Paid for printing letter heads . . . . .	7 50
Printing circular letters . . . . .	3 50
Sending out same . . . . .	3 50
Stamps for correspondence . . . . .	2 60
Expressage of reports to St. Louis . . . . .	1 00
	<hr/>
	\$132 11

There has also been expended for the work of the Conference \$546.50. This has been paid out of the appropriation of the American Bar Association. The sum of \$500 has been paid to Professor Samuel Williston for his services in drafting the proposed Sales of Goods Act, and the sum of \$46.50 has been expended by the President in printing pamphlets and mailing same to advance the work of the Conference. These moneys were not paid through the Treasurer, but through the Committee on Uniform State Laws of the American Bar Association, so no account is made of them in the above report of the Treasurer.

J. MOSS IVES, *Treasurer.*

On motion, the report was accepted, approved and placed on file.

Talcott H. Russell, of Connecticut: I desire to offer the following resolution relative to the death of Judge Brewster:

WHEREAS, Since the last meeting of the Conference the death has occurred of Honorable Lyman D. Brewster, of Connecticut; therefore, be it

*Resolved*, That the Conference of Commissioners on Uniform State Laws hereby expresses its sense of the irreparable loss it has sustained in the death of Judge Brewster, who for thirteen years was a valued member of this body, during ten of which years he served as president, and was

ever active in the work of promoting with zeal and intelligence uniformity of state laws. His death is not only a loss to the Conference, but to each member thereof, to whom he had endeared himself by his high character and genial qualities.

*Resolved, further,* That this minute be entered upon our record, and that a copy of the same be transmitted to the widow of the deceased.

The resolution was seconded and adopted by a rising vote.

The President: Mr. James has suggested to me that it might be well to have some bank designated as the legal depository of the funds of the Conference. I am sorry Mr. James has gone out, as perhaps he might desire to say something on the subject.

William H. Staake: I move that the treasurer be authorized to deposit the funds of the Conference in the Fifth National Bank of Cincinnati. I believe that is the bank Mr. James indicated.

The motion was seconded and adopted.

The President: Mr. James also suggested the employment of a clerk in connection with the work of the Committee on Commercial Law, but we will let that matter stand over until Mr. James is present.

The Secretary: I think the Conference ought to draft a memorial to Congress calling attention to the work it is doing before we adjourn.

The President: I think that is a matter that the Executive Committee will take into consideration.

I have now the pleasure of introducing to the Conference Dr. R. W. Wiley, who is the chief chemist in the employ of the government, and who has been invited to address us on a subject with which we are endeavoring to secure legislation in the various states.

R. W. Wiley: Mr. President and Members of the Conference: I desire to speak to you for a few moments today in regard to the laws which are now in force in this country relating to the control of adulterated food products and the

laws relating to food products in general. There are two kinds of laws in existence, national laws enacted by the Congress of the United States and state laws enacted by the legislatures of the various states. Congress also enacts laws for the District of Columbia because it holds the same relation to the District of Columbia that the state legislatures do to the various states. As regards the character of law there is also a division to be made: First, laws regulating the adulteration of foods and the misbranding of food products. Secondly, laws regulating foods for the ostensible purpose of raising revenue. The laws of the first class are almost exclusively state laws. The laws of the second class are, I believe, exclusively national laws. I refer to the law which taxes oleomargarine and renovated butter, mixed flour, filled cheese, etc. I do not refer to the excise laws relative to beer and whisky because those are really laid for the purpose of raising revenue. I said "ostensibly for the purpose of raising revenue" because no one ever believed that the law taxing oleomargarine or mixed flour or filled cheese was in any sense a revenue measure, nor was it ever intended to be such a measure.

I wish to speak particularly about the state laws, because you are engaged in the very laudable effort, I believe, of endeavoring to bring about uniformity in matters of state legislation. Of course you do not propose to interrupt what you are doing at the present time, but the day will come, and I hope in the near future, when this Conference will take up the laws relating to food products. And, indeed, they sorely need your attention. I have here a collection of state laws relating to food products which I shall leave with your President. There are six pamphlets altogether, and I am sure you will be interested in carefully reading them. The fact is that the laws in nearly every one of the states are different. They do not seem to be built upon any general plan; they do not impose any uniform penalties; they do not have any uniform definitions, nor are they based upon any uniform principles. Many of them are what I call specific laws, which are made to

regulate a certain product, and they go into the greatest detail respecting that product. This is particularly true of dairy products. Almost all of the states have food laws, and I believe nearly all of them have laws relating specifically to dairy products. The regulations governing dairy products are as various as the states themselves, and that is true of the whole mass of food laws. It seems to me, as a layman, that the very first principle which should guide in the enactment of a law of this kind is that it should not be special legislation. A food law should be based upon general principles and not be confined to any specific product, because, if you are going to make a law for products, to be just, you must make a law for every product. Thus you see the statute books would be overcrowded with laws, whereas it is evident, I think, to every gentleman here that food products could be regulated by a single law in which the great principles of the regulation of the manufacture of foods and traffic therein could be set forth. Sometimes legislation has enacted and sometimes the courts have decided that the term "foods" includes beverages and condiments, and Congress has gone a little further than that and defined foods as not only ordinary foods and beverages and condiments, but "all substances entering into the composition thereof," because in that respect, at least, they are foods. The state laws, as I said, are practically all specific laws. They are applied to specific purposes and give specific definitions. I can illustrate how far this goes, perhaps, by citing the fertilizer laws, which are in a similar condition in the various states. In one state for years the officials in charge of the fertilizer law were handicapped by the fact that the legislature had enacted the chemical process by which the analysis should be made, had prescribed it by statute and the result was that, as science advanced and methods improved, the chemists of that state were compelled to have recourse only to the old-fashioned methods and hence were in constant trouble with their brother chemists and manufacturers throughout the country. I think all such legislation as that is objec-

tionable, and especially in regard to food, and I believe if the members of this Conference would take up the subject you could bring about uniformity in legislation upon it.

There are certain definitions which are fundamental in regard to the adulteration of food. To show you how easily this reform can be brought about I will say this: For nearly twenty years there has been before Congress what is called a Pure Food and Drug Bill. It is introduced into every Congress and uniformly dies the death of the just, but it has changed very little in all this time, and scarcely at all, in any of its definitions. They are general; they define in a general way what a food is and what misbranding is, without specifying in any case any individual object of food. That has appealed so strongly to the states that a great many of them in the last few years have adopted, word for word, the definitions which have occurred and still occur in that bill before the Congress of the United States.

Charles F. Libby, of Maine: Where does that bill emanate from?

R. W. Wiley: It is hard to say. It has been inherited, I might say, for many years. It was first known as the Paddock Bill, having been introduced by Senator Paddock, of Nebraska, in 1889, and was founded on the English Food and Drugs Act. The Hepburn bill is the same bill, with certain modifications. One can hardly tell them apart, except that the Hepburn bill has been somewhat improved and enlarged over the Paddock measure. That shows what the states will do when they have a national code, and a great many members of state legislatures in the last five years have written to me saying they wished to have a food bill introduced and asking for suggestions, and I have uniformly replied telling them to make it a general law and to base its definitions upon this bill which is before Congress. There are some six or seven states that have a pure food bill based upon those general definitions. Of course, the local methods of applying it must be different in every state, but if

we can get the general principles fixed the other matters will require little effort.

There are two reasons why we want this general legislation in the states. First, it is in the interest of justice and right that there should be uniform definitions and principles of legislation. It is best for the consumer ; it is best for the judge and the jury and the lawyer, but most of all it is just to the manufacturer and dealer in food products. I say that the purpose of a food law should not be to annoy and vex an honest manufacturer and dealer. It should be to protect the public against fraud and injury. That is the primary object. But the effect, as it works out under these various laws, is often to annoy the manufacturer and the dealer because they are so framed as to vex the manufacturer and dealer without protecting the public any more than a good law would. You can realize the trouble which these men have. Now, I am not a manufacturer, nor have I any interest in any way except to see that justice is done to these people. There are perhaps twenty-five or thirty states which require particular forms of label on a food product. It seems to me altogether unnecessary that there should be any particular form of label. Yet the manufacturers of certain articles of food have to keep a complete set of labels for almost every state, and if they send a large shipment of goods to one state, and those goods are not all sold there and they want to send them on into another state they cannot do it until they have gotten the goods back and changed the labels. Now, it seems to me that a general law would remedy that, and would relieve the manufacturer from an unnecessary annoyance. It seems to me that is one of the principal objects which would be secured by your Conference taking up this very subject.

I want to dwell on the legal aspect of the subject, because I think with this statement you will see the attitude which we, who are interested neither one way nor the other, except in securing immunity from annoyance to the manufacturers, regard this. I want to give you a few illustrations of the character of troubles with which one has to deal, and then



when you take up this subject you will be better prepared to understand just what modifications should be made in these various laws. There are three or four kinds of adulteration—you might call it all adulteration—with which the pure food man has to deal. In the first place we do not consider that anything which nature puts in a food product is an adulteration. We know that a great many food products do contain substances injurious to health. So if you should pass a law that no food product should be injurious to health you would exclude food from the market entirely because many a man has been eating an ordinarily harmless thing at a wrong time. You see accounts in the newspapers every day that such a man died of acute indigestion. What is acute indigestion? It is simply putting something into one's stomach which the stomach at that time cannot tolerate, but which in itself is a perfectly harmless food. You remember a few years ago the death of Governor Flower, of New York. His death was caused after some violent physical exercise by his simply eating a ham sandwich. It touched the wrong spot and acute indigestion ensued. You know the nerves which go to the stomach go to the heart also, and his heart's action was stopped. You could not call a ham sandwich a poisonous substance, even though in this case it killed the man who ate it. So we say a natural food is not to be regarded as injurious to health, although it often is injurious. A little boy who eats an apple has colic. Yet you would not exclude apples from the market as injurious to health. But whenever the manufacturer of foods adds a foreign injurious substance to the food there is where the trouble really begins. In the preparation of foods it is necessary oftentimes to remove certain portions and sometimes to add other bodies. I can illustrate that by the preparation of flour. In the preparation of flour we take out of the grain some of the most nutrient particles. I was told, when I was a boy, that the bran of wheat was all silex. Now there is scarcely any silex in the bran. It is the most nutrient part of the grain. It is almost pure protein. Yet, in the manu-

facture of flour, this valuable ingredient is extracted, but we would not regard that as adulteration. But suppose you take milk and you extract one of its most valuable ingredients, namely, the milk fat. That certainly is adulteration. In the first instance that I cited the bran was removed to improve the product, while in this case the milk fat is extracted for a fraudulent purpose, although the act itself in both cases is the same—the removal of a valuable product. So it is only when a valuable product of a food is removed with fraudulent intent by the manufacturer that the act becomes adulteration. In some cases, in the addition of substances to foods, it is often necessary to add foreign substances. I can illustrate that by the ripening of wine in which a certain amount of gelatine is added to the wine for the purpose of clarifying it.

Charles F. Libby, of Maine: Is that practice general in the treatment of wines?

R. W. Wiley: It is universal, and it is not regarded as an adulteration. It is a necessary and important part of the cellar treatment of wine because it is added to improve its quality, and it makes the wine better. But suppose you add a substance not to improve the quality of the wine, but to increase its bulk, such, for example, as adding water to milk. Water is perfectly harmless, yes, water is a substance just as harmless as gelatine. Still the addition of water in that case is an adulteration because it is added for a fraudulent purpose and not to improve the product. All principles of this kind can be formulated in an act so that it will be perfectly plain what would be considered as adulteration and what would not; yet as a rule the states make no discrimination in that respect. Under many of our state laws you could technically send a man to the penitentiary for milling wheat and taking the bran out, and yet the law has no such meaning or intent. You see it needs the attention of the legal mind to guard and act against such absurdities of construction as has often been put upon these food acts. I have seen the most absurd ruling in court and pleas of lawyers in regard to these food acts that

you can well imagine, and simply because they have not been drawn in the right way under proper legal supervision. It was not that there was any intention to put these absurdities in at all, but the legislators simply did not know how to make a law, and the result is that this is a hodge podge of legislation with which not only the administrator of the law has to do, but especially the manufacturer and dealer has to suffer from it. So it needs sorely your attention.

One or two further illustrations will show you the general principles upon which this legislation should be drawn. I have insisted that it should not be special legislation. I am enough of a democrat, although I am a republican, to believe that we ought not to have special legislation. I do not believe in any kind of sumptuary legislation which says that a man shall not eat or drink what he wishes. What I do believe in is that when a man does want to eat and drink anything he should get what he supposes he is getting, and then if he wants to eat it or drink it that is his business. I don't know whether any of you gentlemen are in the habit of taking a nip of distilled spirits or not. I do it myself sometimes. You will be surprised to know that 85 per cent. at least of every brand of distilled spirits that is sold in this country to-day, except, perhaps, those sold in clubs and in some very high-grade restaurants and hotels, is synthetic from beginning to end. Is that right to the man who drinks? It is bad enough, I am told, to drink anyway even the real stuff. What is it when you drink the imitation? Yet there is absolutely no protection.

William H. Staake, of Pennsylvania: It is mostly watered, is it?

R. W. Wiley: Oh, no. There is plenty of spirits in it. But what kind of spirits? Let me tell you. Not long ago I wanted a glass of beer as I was thirsty, and I was in a part of Washington that I was not very familiar with, and I passed a place where I thought I could get a glass of good beer, but as I got to the door I did not like the looks of the people in the .

place and I passed along further where I saw a place of very inviting appearance and I went in. The class of customers did not seem any better, however, than they were in the other place, but I wanted my glass of beer anyhow, and I remained. There were two men who had ordered whiskey, and they had each a glass as big as a water glass, and they filled their glasses and drank the whiskey and then drank a glass of beer on top of it. I said to myself that those men, and they were laboring men in appearance, must be giving their whole wages for this drink. They had in the saloon one of these cash registering devices that rings up the amount of the purchase, and I saw that the charge for each man was five cents. What kind of a drink do you suppose it is that can be sold for that price? Well, on the other hand, take the high-grade man. What does he get for his money? He goes into a high-priced place and he calls for whiskey, and he is handed out a bottle of whiskey that is advertised as being twelve or fourteen years old. What he gets, however, is a whiskey made the day before out of a barrel of spirits taken out of bond and diluted with water, colored with burnt sugar and prune juice and flavored with artificial essences. Especially is this true if it is Scotch whiskey. I have in my possession a large number of bottles of essence of Scotch whiskey and with directions for making it. You know how popular Scotch whiskey is nowadays, especially in the clubs and hotels. I have looked into the statistics and I have found that the quantity of spirits imported last year from Great Britain was less than 600,000 gallons. That included alcohol and so-called brandy. Why, do you know that would hardly supply the Scotch high-balls that are drunk in the United States in a single month. And this Scotch whiskey is made in the same way that I have prescribed, by adding some of this essence, which is principally creosote distilled from wood to give the burnt flavor.

Talcott H. Russell, of Connecticut: Is creosote injurious?

R. W. Wiley: It is a very fine preservative, and if people drink enough of it their bodies will not decay when they die.

Now, the only security which you have in your whiskey to-day is the government stamp. This is the only absolutely certain way to know that you get a bottle of real whiskey, and if the bottle has been opened in a saloon it may have been refilled again with some other mixture.

The President: Then we must buy our whiskey by the barrel?

R. W. Wiley: No. The law allows it to be bottled in bond, and it is stamped, giving the date it was distilled, how long it stood and when it was taken out of bond.

Thomas J. Kernan, of Louisiana: Has that whiskey been tested by the government as to purity?

R. W. Wiley: When a whiskey is made to-day it is put in a government bonded warehouse and the maker of it has no access to it after that. When he wants to take that whiskey out he pays the duty on it, and then it is his to do what he pleases with it. But he can go in there under the supervision of the revenue officers and put it in bottles and the revenue officer puts a stamp over the cork.

John Garland Pollard, of Virginia: But can it be adulterated before it is put in there?

R. W. Wiley: No, sir; because it is distilled under the supervision of the United States revenue officials.

John Garland Pollard: Then adulteration takes place in the bars?

R. W. Wiley: No. The United States government, curiously enough, has legalized this sort of adulteration, and it is curious that while we cannot get a law passed to stop traffic in adulterated foods we have had this plan pursued: We have what is called the Rectifiers' Law. The idea of rectifying is to make better. That is, you take the crude alcohol and by redistilling it you get out the fusel oils and leave the pure alcohol. That was the old idea. That is not the legal idea, however. The rectifier can pay a license to the United States government, and then he can go into a bonded warehouse and

withdraw a barrel of alcohol, not of whiskey, pay the tax on it, and the government allows him to take that barrel of alcohol into his establishment to dilute it to proof, to color it artificially and to put in all kinds of essences. In fact, he has no limit put upon him at all, and it is done under the authority of the United States government.

Charles F. Libby: How is that?

R. W. Wiley: The revenue officer only watches long enough to see that the rectification is done according to the law. It must be done at such a distance from a bonded warehouse or distillery, and so on, and this is done under the supervision of an officer of the United States revenue to see that everything is carried on according to the provisions of the law, but further than that he has no control over it. He sees that it is alcohol on which the tax is paid, and then the officer's business stops. That is what eighty-five per cent. of the whiskey is, and it is often advertised as being very old when perhaps it was made within a day or two, and they claim that that is the best whiskey in the world because the rectifier, in making the pure alcohol, has taken all the fusel oils out of it. The value of a real whiskey comes from the fact that when it is first distilled it contains these fusel oils and is unfit for consumption, and that is the reason it is put in the bonded warehouse. It takes many years to ripen whiskey; that is for oxidation of the fusel oil into aromatic substances which give to the liquor its bouquet and value and taste. The color of the whiskey comes from the barrel. The law says that no man shall add a particle of burnt sugar to real whiskey; that he shall add nothing whatever to it, and yet at the same time legalizes its imitation and sale under the same name. I think that is wrong. Yet when we come to this pure food law, which never mentions whiskey, but which says that a thing shall be sold for what it is and the label shall state what it is, opposition is met because the bill will require the goods to be labeled compounded or artificial whiskey, which they are. The result is that no bill has ever yet become a law. The law would not stop the manufacture

or sale of the compounded goods. They tell a story of a man up in New Haven who had been drinking whiskey for fifteen or twenty years and thought he was a great expert, and they took a bottle of this bonded whiskey which was absolutely genuine, the age of which was known, and tried it on him. He tasted it and said: "That is pretty fair stuff, but I think it is adulterated." It didn't have that characterless taste which the beverage had which he had been drinking. The same is true of food. We import a great deal of marmalade and jam from England. Congress has passed a law which authorizes the Secretary of Agriculture to inspect all food products coming from foreign ports. We are perfectly willing to stop adulteration if it is of foreign origin. These jams that are imported are made with fruits, sometimes with glucose, almost always with artificial coloring matter, and as a rule they contain salicylic acid as a preservative. Yet they are brought into this country as pure fruit products. When we called the attention of the importers to the fact that they were impure they set up a great howl and said: "If you make us label this stuff as it is we never can sell it, we have given hundreds of thousands of dollars worth of orders for it and you will ruin our trade," and all that sort of thing. The same thing is true with olive oil. Eighty per cent. of all the olive oil we found to be pure, but about twenty per cent. was mixed with other oils. It was not a case of injury to health, but it was fraudulent. They mix a cheaper oil with a dearer one and sell it at the price of the dearer oil. We have stopped that absolutely in the last few months, and we have not had a cargo of olive oil since that was not pure. A few weeks ago a cargo came in which had pasted upon it the label "Pure virgin olive oil. Guaranteed to be made from the best selected California olives," and with the fictitious name of a California mission on the label. Now, what was the object of that? California olive oil, on account of its superiority to the foreign oil, has gained a market which is better than the imported article; that is, a man can sell a California oil to-day in America

at a higher price because it is a better oil. Yet this consignment was of oil from abroad, sent to San Francisco to be sold there as California oil to Californians. That is fraudulent. Of course the law was executed and this consignment was sent back as it should have been. The law gives authority to the Secretary of the Treasury to refuse admission to any food product of this kind which has anything injurious added to it in the first place, or which is falsely branded as to its contents or origin in the second place, or, in the third place, which is forbidden sale or entry into the country from which it comes. The law takes the ground that what is not good enough for foreigners in their own land is not good enough for us. For instance, if Germany forbids salicylic acid in food, and we find that substance in food coming here from Germany, we forbid it and send it back. If France forbids the product of coal tar known as saccharin, that artificial sweet substance, and a food product that comes here from France contains that substance, we exclude it. By the way, that is one of the greatest frauds in this country. It is intensely sweet, and it gives one the impression that he is eating sugar, while at the same time it probably preserves the goods, and it is used very extensively in this country, and, so far as I know, without any legal restriction.

Charles F. Libby: Is that supposed to be unhealthy?

R. W. Wiley: It is. I should not say that all preservatives are unwholesome, but as you may know we have been carrying on a long series of experiments to determine what effect preservatives have upon health and digestion. We have not come to saccharin yet in our investigations, but we have finished our work on boric and salicylic acids.

William H. Staake: There is quite a dispute in our courts now as to whether it is or is not unhealthy. Chemists have testified both ways.

R. W. Wiley: Chemists are like other human beings, you know. You can get lawyers to express opinions on both sides of the case. It depends very largely upon the fee they get.



Thomas J. Kernan: When we buy olive oil here with a foreign label on, how do we know that it is not manufactured in our own country?

R. W. Wiley: You do not know. Congress is coming slowly to enact these laws, but we have to get them little by little. Congress has enacted a law introduced by Representative Sherman, of New York, at the instigation of the dairy people. The dairymen can get almost any kind of a law they want, because they are organized and they work together. This Sherman law was to protect the dairymen of New York against the labeling of cheese made in other states "New York cheese," because New York cheese has attained a very high reputation in the market, and Ohio and Pennsylvania were making cheese and labeling it as New York cheese. But the law was better than they thought. It forbade interstate commerce in any food product which is misbranded in regard to the state or territory where it is made, and it provided a penalty of \$2000. Under that law a man can be punished for doing just what you say has been done. We submitted the question to the Attorney-General because we had to take some action on similar cases, and the Attorney-General said that the plain object of the law is to protect the food against a false label, and, although the law says state or territory, it means any country, and that you cannot label a domestic product with a foreign label or a foreign product with a domestic label. So we are protected to a certain extent in that respect.

Gentlemen, I do not want to take up your time any further. I have mentioned these things to show you the nature of the problems with which we as administrators of the law have to deal, so that when you come to consider this matter you can consider not only the customer who is to be protected in his health and pocketbook, not only the honest manufacturer who wants to make a wholesome product, but you ought to have some idea as to the administration of the law so that it will be made easy and straight and will not be complicated by all the various regulations and provisions of the laws which

now exist. If we can get a national law I believe the states will be very glad to come into uniformity as speedily as they can. That law is almost a law now. It has passed the House by a large majority, and has been introduced in the Senate and sent to a committee, and is on the calendar, and notice has been given that it will be called up on the first day of the coming session. Of course it will encounter this opposition of which I have spoken and it will have hard sailing. But that does not affect these state laws except as a model; it will help the work that you would be doing in trying to bring some order and uniformity into the laws. I hope that you may in the near future be able to take this subject up and give us the benefit of your help.

I forgot to state in regard to this matter of artificial whiskey that Mr. Hough, who is the attorney for the artificial whiskey makers, has been in conference with me and with the committee of Congress for several months, and we have about agreed upon a plan by which he will withdraw his opposition to the bill and pledges his people to accept it. He has accepted the principle that they are willing to mark their whiskey as it is, and, with one or two little modifications, he is just about ready to say that they will withdraw their opposition and urge the passage of the bill before Congress.

Charles F. Libby, of Maine: I offer the following resolution:

*Resolved*, That the Executive Committee of the Conference is hereby authorized to memorialize Congress for the appointment of Commissioners for the Promotion of Uniformity of Legislation in the United States to represent the District of Columbia.

The resolution was seconded and adopted.

The President: We will now take up the consideration of the Sales Act where we left off.

The Sales Act was then taken up and its provisions discussed in detail and amendments were made.

Francis B. James, of Ohio: I move that the draft of the Sales Act be now recommitted to the Committee on Commer-

cial Law to deal with it in conjunction with Professor Williston.

The motion was seconded and carried.

William H. Staake: I desire to present the following resolution on the death of Mr. Dale:

Richard Colegate Dale, one of the Commissioners of the Commonwealth of Pennsylvania for the Promotion of Uniformity of Legislation in the United States of America, and a member of this National Conference of Commissioners since the convention held in Denver, Colorado, August 20, 1901, died in Philadelphia on the 22d day of May, 1904, at his suburban residence at Chestnut Hill in said city, aged fifty-one years.

Mr. Dale was a leader of the Bar of Pennsylvania and a notable man in the community where he has practiced his profession since June 5, 1875. A graduate of the University of Pennsylvania in 1872, he early displayed those qualities which evidenced a well trained mind and a remarkable store of accurate legal knowledge. It was said of him that he was not only a leader conceded by all to be such, but was one to whom the fact of leadership was conceded ungrudgingly and lovingly.

As a counselor and adviser in great financial and commercial operations, he was almost without a peer. He had those virtues and qualities of mind and heart which make a true and noble manhood. Faithful to every trust, earnest, thorough and energetic in the performance of every professional obligation to the court as well as to the client, it has been well said of him that he lived in obedience to the requirements of his religious faith, and its influence was evident in his daily life and conduct, for he was "a man whose conscience was his guide and whose greatest heritage was his confident hope of an eternal life."

The meeting of the Bar of Philadelphia, which convened in the room of the Supreme Court of the Commonwealth of Pennsylvania on May 24, 1904, to take action on the death of Mr. Dale, was a most notable one, both in the eminent character of those who spoke at the meeting and in the unprecedented attendance of the members of the legal profession who united in expressions of grief for the loss sustained and of sympathy for the family of Mr. Dale. Since his death the members of the Bar of Philadelphia have presented to the

Law Association of Philadelphia a life-size portrait in oil of Mr. Dale. The members of this National Conference deplore the death of their distinguished colleague and place upon record their appreciation of his character and worth as a lawyer and as a man. They offer their sincere sympathy to the family and friends of Mr. Dale, and direct that a copy of this minute be sent to his family.

The resolution was seconded and adopted by a rising vote.

Walter S. Logan: I move that the thanks of the Conference be extended to Professor Wilgus for the paper read before this Conference yesterday, and to Dr. Wiley for the address of to-day, and that each of the addresses be incorporated in our proceedings when printed.

William H. Staake: I second the motion.

The motion was adopted.

On motion the subject of a clerk for the Committee on Commercial Law was referred to the Executive Committee with power.

The Executive Committee was authorized to order the necessary printing of the Sales Act, and such other printing as may be necessary for the use of the Conference and its committees.

The President and the Executive Committee were authorized to appear before the proper committee of the American Bar Association and endeavor to secure an appropriation of \$1000 or more for the use of the Conference.

Francis B. James: I move that the names of the members of the Committee on Uniform Laws of the American Bar Association be included in our reports, and that those gentlemen be specially invited to attend our Conferences and participate in the discussions.

The motion was seconded and adopted.

The President: I believe there is no further business to come before the Conference.

William H. Staake, of Pennsylvania: In view of the presentation of these different matters to the American Bar Asso-

ciation and the action of our committee, as most of us will be in attendance at the meeting of the Bar Association and it might be necessary to summon us together, I think a resolution similar to that which we adopted at Hot Springs last year should be adopted now, namely, that we adjourn subject to the call of the chair if he deems it wise to call us together again during the present session of the American Bar Association. I make that as a motion.

The motion was seconded and adopted.

The Conference then adjourned.

ALBERT E. HENSCHEL,  
*Secretary.*

## ADDRESS OF THE PRESIDENT.

BY

AMASA M. EATON,  
OF PROVIDENCE, RHODE ISLAND.

### *Fellow Members of the Conference :*

The past year has been one in which but few of the states have had sessions of their legislatures, and consequently it has not been a year in which we could expect the adoption in many states of our Uniform Negotiable Instruments Act. Nevertheless, I have to report that it has been adopted in Kentucky and in Louisiana.

As to Kentucky, it is chapter 102, Acts 1904, approved by the governor March 24, 1904, to go into effect June 13, 1904.

As to Louisiana, it is Act No. 64 of 1904, approved by the governor June 29, 1904, promulgated July 11, 1904, to go into effect at the state capital July 12, 1904, and throughout the remainder of the state August 1, 1904.

In two other states, the Code Commissioners, after examination of our act, and of the reasons for and against it, give me good reason for expectation of its adoption.

In an article on the "Negotiable Instruments Law," published in the *Michigan Law Review*, Vol. II, January, 1904, since reprinted in pamphlet form, I stated that the earliest action taken looking to uniformity of legislation in relation to bills and notes was the fourth conclusion of the Committee on Commercial Law of the American Bar Association in their report submitted in 1887. I take this opportunity to say that since publishing that article my attention has been called to a circular sent out August 20, 1886, by the Committee on Correspondence of the Alabama State Bar Association to the secretary of every State Bar Association and of the American

Bar Association. This circular named as the principal subjects calling for uniform laws throughout the United States, questions concerning conveyances of land, attestation of wills, marriage and divorce, and negotiable instruments. The circular dwelt especially upon the desirability of uniformity in legislation concerning negotiable instruments, called attention to the English Bills of Exchange Act, and suggested that it be recommended for adoption to the legislatures of the respective states, and it was printed in full the same year in the transactions of the Alabama State Bar Association.

To this Bar Association and its committee is therefore to be given the honor of the first step taken in this country toward uniform legislation concerning negotiable instruments, and I regret that I did not have knowledge of these facts when I wrote my article.

It is gratifying to find approval of our work by high authority. In an article in XVII *Harvard Law Review*, 400, on "Recent Progress Towards Agreement on Rules to Prevent Conflict of Laws," by Honorable Simeon E. Baldwin, he says (page 403):

"The inconvenience resulting from a conflict of laws between our states on the subject of commercial paper has of late been largely avoided by the general adoption of the Negotiable Instruments Act, framed by the annual Conference of the States for Promoting Uniform Legislation. It is from the action of this body that the most is to be hoped for in the immediate future in smoothing the way to general agreement within the United States as to matters of private law. Identical statutes in different states avoid many questions incident to a choice between different statutes of different states. The existence of this American Conference, as a permanent body, was one of the causes that encouraged the Netherlands to call the first Hague Conference. Its work ought to be forwarded by all who are interested in advancing the unity of American jurisprudence."

It is further to be noted that Honorable John J. Maclaren, one of the judges of the Court of Appeals of Ontario, has inserted our Negotiable Instruments Law in the new edition of his book on the Canadian Bills of Exchange Act. It is a striking illustration of the right kind of reciprocity.

In my annual address last year I gave you a summary of the forty-four cases that had arisen in the various jurisdictions where our Negotiable Instruments Law has been adopted. I have found only a few more cases that have arisen or come to my knowledge since then, of which the following are summaries, not of every feature of each case, but of so much as was decided under the provisions of our Negotiable Instruments Law :

*Torpey vs. Tebo*, 184 Mass. 307 (Oct. 21, 1903), s. c. 68 N. E. R. 223. Under ch. 73, sec. 18, Mass. Laws of 1902, (Crawford An. N. I. L., sec. 20) an instrument containing an unconditional order to pay a sum certain in money at a fixed future time to payee or order is a bill of exchange.

If the acceptor, unable to pay at maturity, asks for time, which is given him by acceptance of his promissory note for the amount of the bill of exchange, payable at a day future, the note is founded on a good consideration, whether or not the maker was bound previously as acceptor of the draft.

*Zander vs. N. Y. Sec. & Tr. Co.*, 70 N. E. 449 (Apr. 8, 1904), Ct. of Appeals. A certificate of deposit signed by a trust company, payable to a person named therein or his assigns "which is assignable only on the books of the company" is not a negotiable instrument under the Negotiable Instruments Law (Laws 1897, ch. 612, sec. 20) affirming s. c. 81 N. Y. Supp. 1151.

*Izzo vs. Luddington*, 79 App. Div. N. Y. 272 (Jan. Term, 1903). Under Laws 1897, ch. 612, sec. 20 and sec. 220 as amended, Laws 1898, ch. 336, an order drawn by a creditor on his debtor, directing the debtor to pay a certain amount to the order of a third person, is not binding upon the debtor as a bill of exchange unless he accepts it in writing.



*Morrison vs. Ornbaun*, 75 Pac. 953, Sup. Ct. Montana, (Mch. 14, 1904). Civ. Code, sec. 3996, Mont., as amended by Sess. Laws 1899, declares that a negotiable instrument may provide for a reasonable attorney's fees; and sec. 2, Sess. Laws, 1903 (Cr. An. N. I. L., sec. 21) provides that the sum payable is certain within the meaning of the act, though it is to be paid with costs of collection or an attorney's fee, in case payment shall not be made at maturity." *Held*, that a note made payable with reasonable attorney's fees entitled the holder to collect such fees where the note is not paid at maturity and it is placed in the hands of attorneys for collection, though it is not sued upon.

*Casey, Admr., vs. Pilkington*, 83 App. Div. N. Y. 91 (May Term, 1903). A subsequent transferee, receiving the proceeds of negotiable securities obtained under a forged assignment thereof, is liable to the owner thereof. See Laws 1897, ch. 612, sec. 42, not cited in the opinion.

*Karsch, Respondent, vs. Pottier & Stymus Mfg. & Impt. Co.*, Appellant, 82 App. Div. Sup. Ct. N. Y. 230 (April Term, 1903). Under Laws 1897, ch. 612, secs. 50-95, 98, following antecedent law, 150 N. Y. 59, evidence is admissible in an action against a corporation as indorser of a negotiable promissory note, to show that the note was indorsed by the secretary of the corporation with authority to indorse on behalf of the corporation and that the corporation paid value therefor.

*Packard vs. Windholz*, 40 Misc. Rep. N. Y. 847 (March, 1903). Under Laws 1897, ch. 612, sec. 205, a holder in due course of a negotiable instrument who was not a party to the alteration made therein without the assent of all the parties liable thereon may enforce payment thereof according to its original tenor.

The fact that the payee's indorsement of a negotiable promissory note was forged does not excuse one who subsequently indorsed the note for the accommodation of the maker, from

liability to a subsequent indorsee and holder in due course who was compelled to take up the note before maturity and who had it protested for non-payment. See Laws 1897, ch. 612, secs. 91-95, 98.

Judgment affirmed. See 88 App. Div. 365, Nov. Term, 1903, citing further secs. 50, 55, and holding that one who indorses a promissory note for the maker's accommodation, knowing the note is to be used for the maker's benefit, is not relieved from liability to one to whom the maker negotiated the note for value, simply because the latter knew of the accommodation nature of the indorsement.

*Sutherland vs. Mead*, 80 App. Div. Sup. Ct. N. Y. 103 (1903). Notwithstanding secs. 51, 52, 91-94, 95, 96-98 N. I. L. (Laws 1897, ch. 612; amended Laws 1898, ch. 336), after discussion thereof, this case sustains *Coddington vs. Bay*, 20 Johns. 637 (1822), and holds that sec. 51 should be construed to mean that in order that an antecedent debt shall constitute value that will support an action against accommodation makers or indorsers of a negotiable promissory note fraudulently diverted, the antecedent debt must have been cancelled on the face of the note—affirming *Roseman vs. Maloney*, 83 N. Y. Supp. 749 (1903). See *contra* *Brewster vs. Schrader*, 26 Misc. Rep. N. Y., 480 (1899); *Payne vs. Zell*, 98 Va. 294 (1900), and note 17 Harvard Law Review 563.

This decision is much to be regretted, and it is to be hoped that the case will be taken to the Court of Appeals and be reversed. That the fault is not with the draughtsman, as intimated in the note in 17 Harvard Law Review 563, is apparent, since other jurisdictions have no difficulty in holding otherwise. It is further to be noted that the construction placed by the court upon sec. 51 was not necessary to the decision of the case. In *Payne vs. Zell*, 98 Va. 294, sec. 51 was held to be applicable to the transfer of a negotiable instrument as security only. If *Sutherland vs. Mead* is followed by other courts, we shall fail to have uniformity as to the meaning of the word "value" in the case of an antecedent debt. How-

ever clear the statutes, there is an unfortunate tendency of the courts to fall back to the old law. Must it be stated in so many words that antecedent or pre-existing debt shall constitute value, whether an instrument be transferred in payment or as security?

See *Briket vs. Edward* (Kansas), 74 Pac. Rep. 1100 (Feb. 19, 1904), holding that an indorsee of a negotiable note, taken as collateral security for a pre-existing debt, is a holder for value. Although this case arose upon a note given before the Negotiable Instruments Law was framed, and although this law is not yet adopted in Kansas, the opinion expresses and cites the leading cases on both sides of this controversy, including *Sutherland vs. Mead*.

*Roseman vs. Mahoney*, 86 App. Div. N. Y. 377 (July Term, 1903). Although under Laws 1897, ch. 612, sec. 51, "an antecedent or pre-existing debt constitutes value," a note given as security for a pre-existing debt is not enforceable in the hands of the creditor against an accommodation indorser thereof. In order to be enforceable against an accommodation indorser, it must appear that the note was taken in payment of the pre-existing debt, or that the creditor extended the time for the payment thereof. (But see sec. 55.)

*Nat. Bk. of Commerce vs. Pick*, 99 N. W. 63 (Feb. 13, 1904), Sup. Ct. N. Dakota. A negotiable promissory note, void in the hands of the payee because it is a foreign corporation doing business in North Dakota without having complied with the laws of the state, may be enforced by a *bona fide* purchaser and indorsee for value, without notice of the facts rendering it void in the hands of the payee, notwithstanding sec. 3265, Rev. Codes, 1899, the word "assigns" therein, not including the holder in due course of a negotiable instrument under secs. 30-52 and 57 of ch. 100 of Civ. Code, N. Dak. (Crawford, Ann. N. I. L., secs. 60-91 and 96.)

*Bryan vs. Barr*, 21 D. C. App. 190 (Feb. 3, 1903). Under secs. 58, 59, 124 of Act of Cong., Jan. 12, 1899 (the Negotiable Instruments Law), a holder of a negotiable prem-

issory note who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to the latter, and every holder is deemed *prima facie* to be a holder in due course until the contrary is shown.

*Simpson vs. Hefter*, 87 N. Y. Supp. 243 (Jan., 1904). Where a note was made payable to the maker's order and was indorsed by him, by a firm for whose accommodation it was made and by the defendant, and was discounted by the firm for the plaintiff at more than six per cent., the note was void, as the note had no inception until it was discounted and the discount was at a usurious rate in contravention of law.

In an action on such a note the burden is on the plaintiff of showing he took the note in good faith and without notice of any infirmity.

The court declined to say whether the defense of usury has been swept away by the Negotiable Instruments Law (see Laws 1897, ch. 612, sec. 91, subs. 3 and 4), and followed *Strickland vs. Henry*, 66 App. Div. 23, 1901.

*Poess vs. Twelfth Ward Bk.*, 86 N. Y. Supp. 857 (Feb. 23, 1904). Under N. I. L. sec. 90 (Laws 1897, c. 612) a check becomes discharged on its payment in due course, and one who received payment of a certified check, but repaid the money received thereon when threatened with suit, could not maintain an action against the bank on its acceptance or certification.

*Goetting vs. Day*, 87 N. Y. Supp. 510 (March 24, 1904). Under the Negotiable Instruments Law (Laws 1897, ch. 612, secs. 91 and 95), where the plaintiff purchased the defendant's check in due course for value before it was overdue, with a plausible explanation of the cause for erasure of the indorsement of an intermediate indorser, purchasing it from one to whom it was made payable, known to the plaintiff to be the person whose name was indorsed on the check, the plaintiff is entitled to recover the amount of the check.

Albany Co. Bk. *vs.* People's Co-op. Ice Co., 86 N. Y. Supp. 773 (Mch. 2, 1904). Where a bank discounted a note and placed the proceeds thereof to the indorser's credit, dishonor of the note by the maker at maturity and before the indorser had drawn the full amount of the credit, entitles the maker to set up the defense of a failure of consideration as against the bank under Laws 1897, ch. 612, secs. 93 and 96. The plaintiff bank had notice of an infirmity in the instrument or defect in the title of the indorser before paying to his order the proceeds of discount placed to his credit.

Mitchell *vs.* Baldwin, 84 N. Y. Supp. 1043 (Nov. 11, 1903). Under Laws 1897, ch. 612, secs. 94, 98, in an action against the makers of two negotiable promissory notes, when the defendants proved they were given to one S. as mere memoranda and on an agreement that they would not be transferred, so that the procuring their discount by S. was a fraudulent diversion of the notes, the burden is on the plaintiff of proving that they were *bona fide* purchasers.

Jennings *vs.* Carlucci, 87 N. Y. Supp. 475 (March 24, 1904). Under Laws 1897, ch. 612, sec. 97, where a note was indorsed by the payee to another and by three successive holders before it was acquired by the plaintiff, and the indorser to the plaintiff was a *bona fide* holder of the note and transferred it for value after maturity to the plaintiff, defenses available as between the original parties were not available against the plaintiff.

(But why was not the plaintiff put upon inquiry upon taking the note *after maturity*, and, therefore, under sec. 95, he had "knowledge of such facts that his action in taking the instrument amounted to bad faith?")

Coon, Respt., *vs.* Levy *et als.*, Appts., App. Div. N. Y. (July, 1904), from the New York *Law Journal*, Aug. 19, 1904. This was an action brought upon a negotiable promissory note against the executors of the first accommodation indorser by the second accommodation indorser who had been compelled to pay a judgment recovered against her upon the note by the

payee named therein. Under *Phelps vs. Vischer*, 50 N. Y. 69, in order to establish the liability of such a first accommodation indorser, it had to be shown that he indorsed the note for the purpose of giving the maker credit with the payee. It was now *held* that this is abrogated by Laws 1897, ch. 612, amended Laws 1898, ch. 396, sec. 114, providing that where a person, not otherwise a party to an instrument, places his signature thereon in blank before delivery, he is liable as indorser to the payee and to all subsequent parties, if the instrument is payable to the order of a third person.

*Fonseca vs. Hartman*, 84 N. Y. Supp. 131 (June 22, 1903). Under the Negotiable Instruments Law (Laws 1897, ch. 612), secs. 160, 179 and 183, a notice of protest addressed only to "C. H., N. Y.," is insufficient where there is no evidence that the indorser, thus attempted to be served with notice, ever lived or was sojourning in New York, and no inquiry was made to ascertain whether such was the fact.

*Merchants' Bk. vs. Brown*, 86 App. Div. N. Y. 599 (Sept. Term, 1903). A promissory note made and payable in Canada is a contract governed by the laws of Canada. Under the Canadian Bills of Exchange Act 1890, 53 Vict., ch. 33, sec. 49 (Crawford, Ann. N. I. L., sec. 169), the mailing of notice of dishonor to an indorser known to be dead, directed to a post office known to be one at which he had not received his mail while living, is not a good notice of dishonor.

*State Bank vs. Soloman*, 84 N. Y. Supp. 976 (Nov. 18, 1903). Under the Negotiable Instruments Law, sec. 176 (Laws 1897, ch. 612), where notice of dishonor of a note is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mail.

*Nat. Bk. of N. J. vs. Berrall*, 58 Atl. Rep. 189 (June 20, 1904). Under P. L., 1902, ch. 184, sec. 189 (Crawf. Ann. N. I. L., sec. 325), the holder of a check has no contract with the bank on which it is drawn, and no legal right to exact its payment until the bank accepts or certifies the check.

*Schwartzman vs. Post*, 84 N. Y. Supp. 922 (Nov. 12, 1903). Under the Laws 1897, ch. 612, sec. 200, sub. 5, providing that a negotiable instrument is discharged when the principal debtor becomes the holder in his own right at or after maturity; under sec. 2, defining the holder as the payee or indorsee in possession, and under sec. 3, defining the person primarily liable as the person who, by the terms of the instrument, is absolutely required to pay the note—a demand note is discharged and the maker is freed from liability thereon when an endorsee, upon payment of part of the amount of the note, voluntarily surrenders it to the maker, even though the maker promises at the time to pay the balance of the note.

*Faneuil Hall Nat. Bk. vs. Meloon*, 183 Mass. 66 (Feb. 27, 1903), s. c. 66 N. E. Rep. 410. Under the Massachusetts Negotiable Instruments Law, Rev. Stat. 1902, ch. 73, sec. 139 (Crawf. Ann. N. I. L., sec. 203), where the members of a firm indorse individually a note given by the firm, they are indorsers, with all the liabilities of indorsers, and the holder of such a note may covenant with the firm not to sue it on the note, and yet he may reserve his rights against the indorsers.

*Mut. Loan Assn., Appt., vs. Lesser, Respt.*, 76 App. Div. N. Y. 614 (Nov., 1902). In two actions against the maker of two negotiable promissory notes there was conflicting testimony as to whether the words "with interest" were on the notes when they were negotiated or were added afterwards. Upon dismissal of the complaints and appeal from judgments for the defendants, it appeared that at the trial the attention of the court had not been drawn to the Negotiable Instruments Laws in force in New York. See Laws 1897, ch. 612, sec. 205, upon the effect of the alteration of a negotiable instrument and changing the old rule. Judgments reversed and new trials ordered.

*Baltimore & Ohio R. R. Co. vs. First Nat. Bk.*, 47 S. E. 837, Sup. Ct. of Appeals, Va. (June 16, 1804). Under secs. 127, 132, 185 and 189, ch. 866, Acts 1897 (Crawf. Ann. N. I. L., secs. 211, 220, 321 and 325), the acceptance of a check must

be in writing, signed by the bank, to afford a cause of action against it; a check does not operate as an assignment of the fund on deposit and the bank is not liable to the holder until it accepts or certifies the check.

The following from this opinion is commended to some of the courts that have found difficulty in following the language of the Negotiable Instruments Law because it is at variance with what they find the law was in cases before this act.

"This opinion might be greatly prolonged by citation of conflicting cases and a discussion of the discordant views entertained by the courts and text writers of the greatest ability upon these questions; but the object, as we understand it, of the codification of the law with respect to negotiable instruments was to relieve courts of this duty, and to render certain and unambiguous that which theretofore had been doubtful and obscure, so that the business of the commercial world, largely transacted through the agency of negotiable paper, might be conducted in obedience to a written law emanating from a source whose authority admits of no question."

*Hickok vs. Bunting*, 86 N. Y. Supp. 1059 (March 11, 1904). A promissory note, stating: "Having been cause of a money loss to my friend ———, I have given her \$3000. I hold this amount in trust for her one year after date, or thereafter, on demand, I promise to pay to the order of ———, her heirs or assigns, three thousand dollars with interest," as it did not conclusively appear on the face of the instrument that there was no consideration, imports a consideration sufficient to authorize recovery, in the absence of any evidence to rebut it, under Laws 1897, ch. 612, sec. 320, following *Carnwright vs. Gray*, 127 N. Y. 92.

*Cullinan vs. Un. Surety & Guar. Co.*, 79 App. Div. N. Y. 409 (Jan. Term, 1903). The certification, at the drawer's request, of a check on funds in bank, and the transfer by the bank at the time of the amount of such check, to the payee's account, with the apparent knowledge of either the drawer or payee, will not, in the event of non-payment of the check when



presented with due diligence (the bank having failed) discharge the drawer from liability to the payee, under the Negotiable Instruments Law (Laws 1897, ch. 612, sec. 324).

*Meuer vs. Phenix Nat. Bk.*, 86 N. Y. Supp. 701 (Jan., 1904). Under the Negotiable Instruments Law, secs. 323, 324, 325 (Laws 1897, ch. 612), where a bank, at the request of a *bona fide* holder for value, certifies a check drawn to order, and there are no equities between the maker and the bank, the holder can recover of the bank, though the maker has not indorsed the check to him. (Affirmed, 88 N. Y. Supp. 83, May 13, 1904.)

#### THE TORRENS SYSTEM.

In an article on "The Court of Land Registration," by Charles Thornton Davis, Associate Justice of the Court of Land Registration, Boston, published in the *Yale Law Journal* for February, 1904, the writer calls attention to the fact, not generally known, that registration of titles of land on practically the same general lines as those advocated by Robert Torrens existed in Europe for nearly five centuries before Torrens developed his method in Australia. He tells us further that the system adopted in Massachusetts is a local adaptation to usages and practices of the common law and to existing Massachusetts statutes of the general features common to all such systems, without special regard to the Australian system. The name of Robert Torrens has, nevertheless, become indissolubly connected with that of the system itself, especially as he was knighted for his services, and in common parlance it is called "the Torrens System."

The system was adopted in Massachusetts in 1898, and is now ch. 128 of the Rev. Laws, amended by ch. 448, June, 1904, enlarging the jurisdiction of the court and changing its name to that of "The Land Court." The act has been pronounced constitutional by the Supreme Court of Massachusetts in the case of *Tyler vs. Judges of the Court of Registration*, 175 Mass. 71. The Illinois act was held constitutional

in *People vs. Simon*, 176 Ill. 165 ; and the Minnesota Act was held constitutional in *Douglas vs. Westfall*, 89 N. W. 175 ; 57 L. R. A. 297.

The Massachusetts Act has been followed with only such changes as local laws required in the Philippine Islands Act that went into effect January 1, 1903 ; in the Hawaiian Act that went into effect July 1, 1903 ; in the Nova Scotia Act, passed at the last session of the legislature ; in the bill before Congress for the District of Columbia ; and in a bill prepared for Texas, discussed in July at the meeting of the State Bar Association, of which no report has yet reached me. See 28 Am. Law Rev. 110 for Jan.-Feb., 1904, for a note on the Nova Scotia bill, since enacted ; and see the same volume, p. 247, for March-April, 1904, for a note on the Philippine Islands Act.

The Torrens System was adopted in Illinois in 1895, in California in 1897, in Massachusetts in 1898, in Minnesota and Oregon in 1901 and in Colorado in 1903.

A special committee of the Virginia State Bar Association reported in favor of the system, with a bill for an act, the new constitution of Virginia giving power to the legislature to establish the system. Those of us who were fortunate enough to be present at the meeting of this State Bar Association at Hot Springs, Virginia, in August, 1903, will remember the ability with which the subject was discussed.

The activity and ability of the commissioners of our Conference from Louisiana are evidenced by their supplemental report to the governor of June 1, 1904, upon the Torrens System, recommending the passage of an act to authorize the governor to appoint a commission to consist of four members of the Bar and one of the justices of the Supreme Court to investigate and report.

The commissioners of our Conference further say that if the system be made compulsory as to titles that go through the courts, the general public would soon adopt the system, and that there can be no question as to the constitutionality

of a law providing a method of completing the title to property sold under judicial process or acquired by bequest or inheritance, for the state may impose such conditions as it thinks proper for the passing of title under these circumstances.

In 1901 the committee of the Michigan State Bar Association on Legislation and Law Reform advocated the adoption of the Torrens System in the following cogent and concise language:

The Torrens system substitutes for the present system of registering deeds a system of registering titles. Instead of an ever lengthening list of deeds to be examined by a lawyer, whose opinion as to the validity of the title conveyed is often the purchaser's sole guaranty, is substituted a certificate as simple as a certificate of stock, showing on its face in whom the title is vested, and also all the liens or other interests existing in the premises in question. The correctness of this certificate is guaranteed by law.

The evils of the present system are manifest, particularly in large cities and in older communities. These are:

1. Expense. The cost of the abstract, or its continuation, and the opinion of counsel thereon upon every transfer.

2. Delay. This may extend to several months, the time being spent in procuring abstract and deeds to fill the gaps in the chain of title and in negotiating as to claimed defects.

3. Insecurity. Errors may and do often exist in the abstract. They may and do always exist in the opinion of counsel.

4. The constant lengthening of a chain of deeds to be examined constantly increases the expense, delay and insecurity.

5. These defects operate as a perpetual tax upon the holder of real estate, depreciate its value, and make it notoriously a "slow" asset. Actual experience has demonstrated that the Torrens System will correct all these defects:

1. The expense of the initial registration does not exceed the cost of a single transfer under the present system. In all subsequent transfers the cost will be very much less than now.

In ordinary cases the total expense would not exceed two dollars.

2. Speed. In the generality of cases, the transfer or mortgage, including the examination of title, all may be completed within one hour.

3. The title is vested or quieted at every transfer; there is no long chain of title to be examined; the chance for error is eliminated, and the title as transferred is guaranteed not only by the seller's warranty, but by the law.

4. The records are shortened. No deeds are recorded. The original or duplicate deed is filed or left with the registrar.

5. This safe, short and inexpensive method increases the value of land and makes it a "quick" asset.

The principles of the Torrens System are:

1. A public examination of titles in the United States by a court of competent jurisdiction.

2. A registration of the title found upon such examination.

3. Issuance of a certificate of title.

4. Reregistration of title upon every subsequent transfer.

5. Notice on the certificate of any matter affecting a registered title. Claims not registered have no validity.

6. Indemnity against loss out of an assurance fund.

The well-known law book writer, Leonard A. Jones, now the judge of the Land Court of Massachusetts, in an article on "Land Title Registration in the United States," published in the *American Law Review* for May-June, 1902, after reviewing the history of the subject in the various states of the union, concludes that it seems probable, in view of the present consideration given to this subject and the general interest manifested in it, that at no distant day some system of title registration will be generally adopted throughout the country. There is every reason for uniformity on this subject and no reason against it. Now is the time to frame a uniform act, while only six states have adopted the system, before other states adopt discordant systems. I recommend that your Committee on the Torrens System be authorized to employ an

expert to draft such an act at an expense not to exceed one thousand dollars.

#### UNIFORM PARTNERSHIP ACT.

The Dean of the Harvard Law School, Professor James Barr Ames, has consented to draft for us a Uniform Partnership Act, and we look forward to next year's meeting when this act is to be submitted to us by him.

In an article on "The Law of Reason," by Sir Frederic Pollock, in the *Michigan Law Review* for December, 1908, at p. 165, he says:

"Perhaps the best example of the sound and legitimate work of equity, proceeding on broad principles of justice and convenience, and giving permanent definition to reasonable practice tried by long experience, is to be found in the law of partnership. That law is modern and self-contained; it owes very little to early precedents and hardly any to legislation; in about a century it grew to a condition so settled and so acceptable as to be ripe for codification. In 1890 it was codified in England, and no material fault has been found with the result. The Commissioners on Uniformity of Legislation, who have already done such excellent work in the United States, are now turning their attention to the same subject, and it may not be many years before we see a substantially identical law of partnership enacted for the English-speaking world; enacted as was the Negotiable Instruments Law, not by the invention of any one man or generation, but on the firm base of the combined legal and commercial reason of several generations."

#### MARRIAGE AND DIVORCE LAWS.

In an article on "Proposed Reforms in Marriage and Divorce Laws" that I wrote for the *Columbia Law Review*, see April number, 1904, in my review of the history of this subject I should have made mention of the excellent work done by the Reverend Samuel W. Dike, the efficient Corresponding Secretary of the National Divorce Reform League, now entitled the National League for the Reform of the Family. In

1890, on behalf of this league, he attended the meeting of the American Bar Association and took an active part in forwarding the movement already begun in New York to get as many states as possible, and also the Congress of the United States in behalf of its own special jurisdiction, to establish Commissioners on Uniformity of Legislation. See the report of the National Divorce Protection League for the year ending December 31, 1890.

A work of uncommon research and value has appeared during the last year, "A History of Matrimonial Institutions," by Professor George Elliott Howard, of the University of Chicago, to which I would particularly call the attention of the Conference, as it treats of marriage and divorce laws, their history, meaning, defects, etc., with a flood of learning enlightened by good common sense that renders the work especially helpful to us. I have risen from the study of these three portly volumes with the conviction that his conclusions are sound, *i. e.*, that our marriage laws are worse than our divorce laws; that the principal fountain of divorce is bad matrimonial laws and bad marriages, while our apathy, our carelessness and our levity regarding the safeguards of the matrimonial institution are well-nigh incredible. "For the wise reformer who would elevate and protect the family, the center of the problem is marriage, and not divorce." The work is invaluable to every student of the subject; and I commend particularly to our Committee on Marriage and Divorce what the very able and learned author says about the requisites of a marriage law, with the expression of an earnest hope that we may be able to secure the services of Professor Howard in drafting a Uniform Marriage Law for recommendation to the state legislatures.

I renew the suggestion made two years ago that any competent court having jurisdiction over the parties should have jurisdiction over divorce between those parties, and I suggest the following draft for a uniform act for the consideration and

report thereon next year of our Committee on Marriage and Divorce :

“Section 1. The ——— court of this state shall henceforth have jurisdiction over all petitions for divorce only when actual service of process shall have been made upon the respondent within this state, irrespective of any question of domicile.

Sec. 2. In hearing and determining all petitions for divorce, the law of the state where the marriage took place and the law of the state where the cause for divorce arose shall be the law under which the court shall determine the case.

Sec. 3. All acts and parts of acts inconsistent herewith are hereby repealed.”

It is only in questions of divorce that the English and the American law make the court's jurisdiction depend upon the domicile of the parties. It is claimed that this is necessary, because the state has a peculiar interest in the marital relationship. This is true, but it has not prevented the usual rule from obtaining under other systems of law that jurisdiction over the parties gives jurisdiction over divorce between them. The real question is whether this would not afford better protection against the gross evils of the present system, such as the absence of uniformity, the hardships, sometimes upon the wife, sometimes upon the husband, involved in many of the existing rules governing divorce, the gross frauds and connivance so commonly practiced where so much depends upon domicile, which is principally a question of the intention of the one who has a strong interest in misrepresenting that intention. Even if marriage is a status as well as a contract, would not the interest of that status, as well as the interest of the state, be better protected under the rule now suggested, of restricting jurisdiction over divorce to actual jurisdiction over the parties?

Such a system would dispose of the vexed questions arising out of the necessity of notice, actual or constructive, to a party not before the court, now disturbing the courts. The injustice of a decree granted against one who is absent, who perhaps has never had notice, would be removed, and order would be evolved out of the chaos and the conflict of principles

or rather the absence of any scientific principle now reigning over divorce in our courts.

In the absence of constitutional provision or express legislation, no American court has jurisdiction to grant divorces. The power is derived either from a constitution or from an act of the legislature. If from the legislature, that legislature may also provide by what rules the court shall be guided in its jurisdiction over divorce. It is well known that a legislature could grant divorces even after conferring that power upon a court. See the leading case of *Starr vs. Pease*, 8 Conn. 541. In *Maynard vs. Hill*, 125 U. S. 190, the Supreme Court of the United States has even gone so far as to hold valid an exercise of special legislative power by a territorial legislature, granting divorce to a man, although the wife had no knowledge or notice of the husband's petition.

Of course difficulties would arise under such a law as I suggest, as they always arise, under every change. They are inherent in any human law. It is submitted, however, that they could not be more appalling than those so far found to be insurmountable. For instance, if a marriage takes place in South Carolina, where no cause for divorce is recognized and the couple move to another state, where adultery is recognized as a cause for divorce and one of the couple is there guilty of adultery, that is made the ground for a petition for divorce in that state; or suppose a husband and wife to separate and to move into different states; suppose the husband to commit some felony for which he is sent to a state's prison, and that such imprisonment is cause for divorce in that state, but is not in the state where the marriage took place nor in the state where the wife lives. What law shall then determine whether the wife is entitled to a divorce?

Art. IV, sec. 1, of the Constitution of the United States provides that:

“Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the



manner in which acts, records and proceedings shall be proved and the effect thereof."

This gives to Congress the power to determine the effect to be given in one state to a decree of divorce obtained in another state by legislation on the subject that would not exceed the limits of the power conferred. It also confers upon the Supreme Court the power it has recently exercised in determining whether "full faith and credit" has been given by one state, through a decision of its Supreme Court, to the "judicial proceedings" or decree of the Supreme Court of another state.<sup>1</sup>

A couple were married and lived in Massachusetts. The husband went to South Dakota to obtain a divorce upon the ground of desertion in Massachusetts while the parties lived there, desertion being a ground for divorce in South Dakota, but not in Massachusetts. This was in violation of the law of Massachusetts of 1902, ch. 152, p. 1357; Pub. Stats., ch. 146, sec. 41. A decree of divorce was obtained in South Dakota by the husband through the connivance of the wife. The Supreme Court of Massachusetts declared the decree of divorce obtained in South Dakota to be invalid (176 Mass. 92). It was held by the Supreme Court of the United States that the full faith and credit clause of the Constitution of the United States was not violated by the refusal of the Massachusetts court to give effect to such a decree. The result is that no state is bound to recognize a decree of divorce obtained in fraud of its own laws in another state.

Query, was not the decree obtained in South Dakota void, even in that state, the wife having consented in writing to the granting of a decree for desertion?

Under the present condition of the law, a person married in one state may obtain a divorce in another state under such circumstances that the divorce will not be recognized in the first state. He may marry again in the second state, in which case his first wife will be his legal wife in the first state and his second wife will be his legal wife in the second state. He

<sup>1</sup>Andrews vs. Andrews, 188 U. S. 14 (Feb. 16, 1903).

may repeat this performance in other states, and thus have a legal wife in each of these states. What view would be taken in other states where he had no wife of the status of these various wives it would be impossible to foretell. The ardent polygamist would, however, require no Mormondom in his search for plural marriages.

Indeed, it has already been suggested in a report by the Judiciary Committee of May 5, 1892, House Reports, 52d Congress, 1st session, vol. 4, No. 1290, at p. 2, reporting upon a proposed amendment to the Constitution of the United States for the federal regulation of marriage and divorce.

“The Committee suggests that Congress has already power under Article IV, section 1, of the Constitution, to prescribe the effect to be given in all other states to divorces obtained in any state. Why may not Congress, by a general statute, prescribe that a judgment or decree of divorce should be valid in every other state only when duly proved to have been obtained *bona fide* on proof of a legal ground and after personal service on the defendant?”

Now, without such a statute, this is substantially what the Supreme Court has done in the case of *Andrews vs. Andrews*.

Is it not evident that such a law as I have now proposed would be constitutional? Indeed, it is particularly worthy of note that under such a uniform law as is here suggested, the Supreme Court of South Dakota could not have granted the decree of divorce in question.

In House Report 1290, above cited, at p. 4, the minority give a specific instance of a man legally married in more than one state and yet who was not legally guilty of bigamy, and then they say:

“Himself a deserter from the family hearth, an eloper, he had charged his wife with desertion, and on that false charge, in another jurisdiction and without her knowledge, had obtained a divorce valid in California, and he had then married in that state and, after a time repeated the performance, winding up in Indiana. Life was too short for him to make the circuit of the union, but had he started earlier and

shown a little more activity, he might have done it without meeting with any serious obstacle in the law. In New York, a man (or woman) against whom a decree of absolute divorce has been pronounced, is forbidden to marry again, and if he does marry again in the state, he commits a crime and the marriage is void; but let him cross the state line and marry again, and the marriage is valid, and he commits no crime."

Even in so humble a sphere as the war upon mosquitoes, we may find a field for usefulness. It may strike many as a humorous suggestion that there ought to be uniform legislation for the extermination of these pests. But when we reflect that mosquitoes are much more than a source of discomfort, being, as it is now proved, propagators of dread disease entailing the untold loss of human life, the importance of their extermination is apparent. This work has been undertaken by the National Mosquito Extermination Society that is trying to bring about this result through uniform legislation to be secured by the state boards of health.

The tendency towards co-operation and uniformity is well illustrated by the call for a National Conference of State Boards of Law Examiners, to be held in St. Louis concurrently with the meeting of the American Bar Association.

Thus on every side, turn where we may, we see how widespread is the movement in this country towards uniformity of legislation.

**REPORT**  
**OF THE**  
**EXECUTIVE COMMITTEE.**

*To the Conference of Commissioners on Uniform State Laws :*

At the Thirteenth National Conference of Commissioners on Uniform State Laws, held at Hot Springs, Virginia, on Tuesday, August 25, 1908, Rule 4 of the Conference of Commissioners was amended, so as to provide for the appointment of an Executive Committee as a standing committee, and subsequently Honorable Amasa M. Eaton, President of the Conference, appointed Messrs. Staake, James, Libby, Logan and Meldrim as members of the committee.

The rules of the conference fail to designate the duties of this Executive Committee, but in the absence of such designation, it is suggested that all matters of business of the Conference not within the purview of the other nine standing committees should properly be referred to this committee.

An inspection of the printed proceedings of the last annual Conference fails to show the special reference of any matters to this committee.

It is also respectfully suggested that it should be made the duty of this committee, and not that of the President and Treasurer, to communicate with the governor and legislatures of the several states, with the view of securing the appointment of commissioners from states not already represented, the attendance of commissioners already appointed by the several states, and the necessary appropriation from each state which has appointed commissioners for the payment of the expenses required to carry on the work of the Conference.

Work in these directions has been performed by individual members of the committee, and the governor of the Commonwealth of Pennsylvania has expressed the opinion in writing to the commissioners of that state that "it would seem to be

beyond question that the state ought to pay a proportion of the expenses " of the Conference.

Upon inquiry by the President of the Conference, the committee, believing that it would be of "great assistance to the Conference in the future to have a verbatim report of the proceedings of the Conference," especially of the discussion of the Uniform Sales Act, approved of the employment of an official stenographer to report the proceedings of the Conference. It is believed that the publication of these proceedings, and a prudent, but generous, distribution of such publication will stimulate an interest in the important subjects of the Conference and result in a "better accomplishment of the work for which its members were appointed by the states."

The committee has learned, with much gratification, of the probable appropriation by the directors of the American Warehousemen's Association to this Conference of a liberal sum to be used in drafting a Uniform Law on Warehousemen.

The committee asks the careful consideration by the members of the Conference of the matters referred to in the printed announcement circular of August 5, 1904, placed in the hands of each of the commissioners by President Eaton.

It has been suggested the committee that in view of the doubt expressed as to the power of the members of the Conference to propose any uniform laws, save such as may require the action of the respective state legislatures, that all subjects of the kind requiring an act of Congress might be more properly entertained by the Committee on Uniform State Laws of the American Bar Association. As the promotion of "uniformity of legislation throughout the union" is one of the objects specified in the constitution of that Association, and as special provision is also made by that Association in its by-laws, section 12, for communicating the action of the Association to State Bar Associations, with the view of securing the co-operation of such associations in having bills introduced in the several state legislatures, and there appears to be no express limitation of the powers of a committee of that Asso-

ciation, such proposed legislation might be properly entertained by that committee as "an appropriate field of action."

The committee has, from time to time, advised with the President of the Conference at his request upon matters submitted by him to the committee.

The committee suggests that power be given to it by the Conference to prepare and report at the next annual Conference of the Commissioners, suitable by-laws for the Conference and for the Executive Committee, and that in the future constitution of the committee, the President, Secretary and Treasurer should be made *ex officio* members of the Executive Committee, and that all arrangements for each annual Conference of the commissioners should be referred to this committee.

The committee would urge upon the commissioners from each state the importance and the necessity of securing a reasonable appropriation, by each state, for the expenses of this National Conference. As our President has well stated, that, "while none of us expect to be paid for our services, it does seem that the public good we are doing and the public spirit animating us all should be recognized by small appropriations from the states," for the expenses of this National Conference.

The committee announces, with profound sorrow and regret, the deaths on the fourteenth day of February, A. D. 1904, of Honorable Lyman D. Brewster, Commissioner from the State of Connecticut and a former President of this National Conference, and on the twenty-second day of May, A. D. 1904, of Richard C. Dale, a commissioner from the Commonwealth of Pennsylvania and Secretary of the commission from that state, and recommends that a committee be appointed to prepare a suitable minute for adoption by the members of this National Conference.

WILLIAM H. STAAKE, *Chairman*,  
FRANCIS B. JAMES,  
CHARLES F. LIBBY,  
WALTER S. LOGAN,  
PETER W. MELDRIM.

**REPORT**  
**OF THE**  
**COMMITTEE ON CONVEYANCES, DEPOSITIONS AND PROOF**  
**OF STATUTES OF OTHER STATES.**

*To the Conference of Commissioners on Uniform State Laws :*

Your Standing Committee on Conveyances, Depositions and Proof of Statutes of Other States herewith submits its annual report in accordance with the eleventh rule of the Conference.

I. The only legislation of the year coming to our notice in the line of the recommendations heretofore made by the Conference on any branch of law within this committee's province is the Ohio act (97 Ohio Laws 171) amending section 4111 of the Revised Statutes, which specified consuls as the only United States officials before whom acknowledgments of Ohio deeds might be made in foreign countries, so that now consuls-general, vice and deputy consuls-general, vice and deputy consuls, commercial agents and consular agents of the United States are also qualified to take such acknowledgments. This is in line with section 6 of the bill relating to the acknowledgment of deeds heretofore recommended by the Conference.

II. On the subject of depositions, your committee is of opinion that there is no such general inconvenience from want of uniformity in methods of taking and certifying them as to call for an effort to bring about uniformity by legislation. Usually an attorney who wishes a deposition taken in another state for use in his own state sends his local forms and instructions which serve as a sufficient guide to the magistrate and to other counsel.

III. As to proof of statutes of other states, your committee is of opinion that there is no such general grievance arising from lack of uniformity in this respect as to call for an effort to bring about such uniformity by legislation. Article IV, sec-

tion 1, of the United States Constitution empowers Congress to prescribe by general laws the manner in which acts, records and judicial proceedings of any state may be proved in another state and the effect thereof, and by section 905 of the United States Revised Statutes Congress has provided methods of such proof. Many states have made cumulative provision for still simpler and easier methods, but it does not seem to your committee that such diversities as exist do or can cause any general inconvenience or embarrassment.

We, therefore, suggest that there is no need for a standing committee of this Conference to be charged with the subject of depositions, or with the subject of proof of statutes of other states, and would recommend that rule 4 of the Conference be amended so as to strike out the words "Depositions and Proof of Statutes of Other States."

All of which is respectfully submitted.

WM. E. CUSHING,  
*Chairman,*

THOMAS PATTERSON,  
A. A. PHLEGAR,  
THOS. J. KERNAN.



**REPORT**  
**OF THE**  
**COMMITTEE ON PURITY OF ARTICLES OF COMMERCE.**

*To the President and Members of the Conference of Commissioners on Uniform State Laws :*

Your Committee on Purity of Articles of Commerce would respectfully report :

At the Thirteenth National Conference of the Commissioners, held at Hot Springs, Virginia, the committee presented a report, which recommended that, "In view of the present status of the legislation before the national legislature, your committee would recommend that action by the Conference of Commissioners be delayed until its convention in the year 1904." "This report was accepted by the Conference."

Your committee learns that the national House of Representatives passed what is known as the Hepburn Pure Food Bill on January 20, 1904, on a rising vote of 201 to 68, its opponents being unable to secure a roll call on the bill. At the time of adjournment the bill was pending in the national Senate.

An amendment to the bill, as heretofore reported to this Conference, was made, inserting the word "wilful" with reference to persons who sell adulterated or misbranded goods, and which would have compelled the government to prove an intention to violate the law by the venders, but later this amendment was stricken out. Other efforts to change materially the text of the bill were defeated.

"The bill fixes the standards of foods and drugs as to their purity, strength and character, and defines what shall be considered adulterations or misbranding of foods and drugs. It also prohibits interstate commerce in or importation or exportation of such misbranded or adulterated articles.

“ It is proposed to enlarge the scope of the Bureau of Chemistry to include the Bureau of Foods, and impose upon it the duty of performing all chemical work for the other legislative departments. This bureau will be charged with the duty of inspecting food and drug products which belong to interstate or foreign commerce. The Secretary of Agriculture is given authority to employ such chemists, inspectors, clerks and laborers as may be necessary for the enforcement of the act.

“ One section of the bill provides penalties for the introduction of adulterated or misbranded foods or drugs, and another section requires the Secretary of Agriculture to prescribe rules and regulations to govern the Director of the Bureau of Chemistry and Foods in examinations of articles required to be inspected under the law.

“ Violations of the law shall be reported by the Secretary of Agriculture to the proper district attorney of the United States, who is directed to cause proceedings to be prosecuted without delay.”

While it is a serious question whether the Conference of Commissioners “ should directly or indirectly pass any resolution endorsing national legislation or consume much time in the discussion of such a resolution,” there surely can be “ no objection to discussing national legislation. Each state can have a pure food law in reference to state commerce, and the national Congress can enact a pure food law regulating interstate commerce.”

Your committee would strongly recommend the preparation of a statute regulating purity of foods, as “ an example to be adopted by all of the states of the union, so as to have a uniform pure food law.” A perusal of the daily papers shows an increase of interest in the subject of pure food laws, and a vigorous prosecution by state officials of offenders against existing laws in different sections of the country. There can be no doubt that this country needs uniformity of food laws. The existing conditions in the present state food laws have been justly termed “ chaotic.” An examination of their provisions

in regard to dairy products alone will justify this criticism. Attention has been called again and again to "our confusing food laws," and the necessity of uniformity in legislation in the several states, but in view of the present status of the legislation before the national legislature, and your committee believing that the present attention of the Conference should be given to the "perfecting of the sales code," as announced by President Eaton in his circular notice of August 5, 1904, your committee repeats its recommendation to the last Conference, viz.: "that action by this Conference of Commissioners shall be delayed until its convention in the year 1905."

Respectfully submitted by

WILLIAM H. STAAKE, *Chairman*,  
FRANCIS B. JAMES,  
WALTER S. LOGAN.

**REPORT**  
**OF THE**  
**COMMITTEE ON UNIFORM INCORPORATION LAW.**

*To the Conference of Commissioners on Uniform State Laws:*

Your Committee on Uniform Incorporation Law respectfully report:

**THE EVILS OF THE PRESENT SYSTEM.**

Each state and territory, and the District of Columbia, has a corporation law of its own. Each prescribes a different method for the formation of a corporation; gives to the corporation thus formed different powers; imposes different responsibilities upon the corporation itself, and upon its officers and stockholders; prescribes different remedies against it, and provides for a different method of winding up its affairs in case of dissolution.

Each state and territory, and the District of Columbia, extends to corporations formed in other states a different degree of welcome or unwelcome when they seek to do business within its borders. They impose different conditions preliminary to the right to transact such business, different responsibilities in connection with the business, and a different rate of tax therefor.

A company of men desiring to do business of any kind in the State of New York and to incorporate themselves for that purpose, first consult their lawyer on the subject of incorporation and pay him his retaining fee. He examines—if he is not already familiar with the subject—the corporation laws of all the states and territories in the United States to find out where he can incorporate his clients and give them the greatest advantages from such incorporation. He has to consider

1. The cost of incorporation and the preliminary license tax in connection therewith;

2. Annual license taxes thereafter;
3. The extent of the power which will be vested in the corporation;
4. The responsibility of the incorporators;
5. The ability of the corporation to do business in different states, and
6. Last, but not least, what laws will protect the business of his clients best from the curiosity of their rivals and the scrutiny of public officials.

The different states and territories, not omitting the District of Columbia, compete for the business. In return for a certain amount to be paid them preliminarily and annually in the way of taxes, they offer the largest possible amount of freedom from scrutiny and control. Distance from their corporation home is not always an objection to the incorporators. They can do the necessary communication with the authorities of the state or territory where they incorporate through the mails, and a two-cent postage stamp will cover a multitude of sins. The farther away they are from their corporation home often the better, for the more secure they are from attack through the courts of the state or territory which gives them birth. So it is that corporations doing business in Boston and New York are wont to incorporate under the laws of Delaware or West Virginia or Nevada or Arizona, and if anyone has a grievance the courts of these distant states and territories may be open to them, but the prospect of a litigation three thousand miles from home is not alluring to the man who has rights to enforce. If a Nevada corporation has to do business in New York of such a nature that it is likely to be caught at it, it must conform to the New York law as to foreign corporations doing business within its limits, and the courts and public authorities of New York have more or less jurisdiction and power of scrutiny over the foreign corporation, but they are far from having practically the same power or authority over it that they have over a domestic corporation. They cannot dissolve it. They cannot prevent its mov-

ing its office to Hoboken and perhaps defying them, and the relief that can be obtained by creditor or stockholder against it has its severe limitations.

If the incorporators desiring to do business in New York are willing to brave its perils, they will incorporate under the New York laws, but if they are ambitious and wish to do business in other states, they must get the authority and submit to the jurisdiction of each state where they wish to carry on the business, and instead of having one master they have as many masters as there are states or territories to which their business extends. The requirements of each state are peculiar. The conditions are different and their responsibilities, civil and criminal it may be, are different. The present system seems to offer :

1. The maximum of protection for fraud ;
2. The minimum of protection and convenience for honest dealing, and
3. The best of opportunity for small states and territories to fill their coffers with the proceeds of taxing outsiders, and the best chances for their petty public officials to get a good income without doing any work.

#### THE NECESSITY FOR CORPORATE ORGANIZATION.

We are living in an age of great things ; things too great to be accomplished without co-operative effort. Production, transportation and distribution are now necessarily carried on on such a large scale that the resources and abilities of many men must be combined to secure a successful result. Besides, individual men die, and modern business affairs are too complicated to be passed through a probate court as often as men may die. The business of our country, to a greater and greater degree every year, must be done by its corporations which have the two requisites necessary for success, which the individual cannot have, the power of indefinite extension and combination and legal immortality.

The corporation has come to stay and is one of the most beneficent instruments of modern civilization.

#### THE NECESSITY FOR GOVERNMENT SUPERVISION.

Corporations, however, have their abuses as well as their uses. They offer the opportunity for combination for evil as well as for good. They may be as potent to protect the wicked from responsibility for their sins as to protect the widow and orphan from the business mistake of the head of the family. They may adopt bad methods instead of good methods. They may be the instruments of fraud and wrong as well as the handmaids of modern civilization. It is for the state to step in and with firm and impartial hand, while giving them all the freedom that is necessary for the proper conduct of their business, to restrain them from using their corporate powers to accomplish wrong. The corporation as a servant of the state is an instrument of untold good. The corporation, as the state's master or the state's enemy, has a potency for untold evil.

#### THE NECESSITY FOR UNIFORM LEGISLATION IN RELATION TO CORPORATIONS.

There would seem to be no subject as to which uniformity is more desirable, for there is no subject more important to the well being of the state than the proper control of corporations, a control which shall impose the minimum of restraint upon lawful business and the maximum of restraint when corporate managers become public enemies. Our Conference has been instrumental in securing uniformity of legislation on commercial paper, but the evils which resulted from the diverse laws on this subject were infinitesimal compared with the evils that now confront us from the chaotic state of corporation legislation. We are asking the states to unify their marriage and divorce laws. The domestic relationship is indeed an important subject. The question of marriage and divorce is one that affects the home, but the evil that results from the difference in the laws

of the different states on the subject is perhaps quite as much sentimental as real, and the remedy that can be applied is much less trenchant and far-reaching in its effects than the remedy that can be applied in correction of the evil which we are now discussing.

We know of no subject to which this Conference of Commissioners on Uniform State Laws may devote themselves to better purpose than the subject of unifying, in so far as we can, the incorporation laws of our country—the laws on which so large a part of the business and the prosperity of our country depend.

#### THE REMEDY.

It is often easier to diagnose a disease than to prescribe a remedy. A complete and perfect remedy, perhaps, it is impossible to find, but it seems to your committee that much may be accomplished in the way of a remedy by wise legislation on the part of Congress and the legislatures of the several states and territories.

The first thing to be done, it seems to us, is to secure the passage by Congress of a National Incorporation Law, and to require that a corporation to carry on interstate commerce under the Constitution should conform to the provisions of the national law. We are of the opinion that the general principles of the law drafted and proposed by Professor Horace L. Wilgus, of the University of Michigan, are correct and that the passage of a National Incorporation Law on these lines would be wise legislation. The bill is very carefully drawn and contains adequate provisions for its enforcement and protects alike the honest corporation and the public.

The provisions of such a law would cover a large part of the larger corporations of the country. It should, in our judgment, be followed by legislation along similar lines by the separate states and territories. The same regulations which are wise as to interstate commerce would generally be equally wise as to commerce within a state. The same powers and the



same restraints would, generally speaking, work for good in the one case as in the other.

We have not thought it necessary or desirable that we should formulate such a law. Our present purpose is simply to indicate the necessity for it and the lines on which it should be drawn.

Respectfully submitted,

WALTER S. LOGAN,  
*Chairman.*

**REPORT**  
**OF THE**  
**COMMITTEE ON A UNIFORM SYSTEM OF ACCOUNTING IN**  
**STATE AND MUNICIPAL AFFAIRS.**

*To the Conference of Commissioners on Uniform State Laws :*

The committee appointed at the Thirteenth Annual Conference of the Commissioners on Uniform State Laws, held at Hot Springs, Virginia, as a "Committee on a Uniform System of Accounting in State and Municipal Affairs, to confer with other bodies having this aim in view, and to report to this Conference at its next meeting," would respectfully report :

That the paper on "A Uniform System of Accounting in State and Municipal Affairs," read at the last annual Conference by Mr. L. G. Powers, Chief Statistician of the United States Census Office, contained on pages 30 to 40 inclusive of the last annual report of this Conference, gave us a most learned and comprehensive statement "of the states which have statutes for such systems of accounting, the character of those statutes and some of the beneficial results following their adoption."

The committee having a grateful recollection of the forcible presentation of Mr. Powers in his paper, communicated with him and learned that: "The last year has seen but little accomplished in the way of positive legislation. Bills were introduced in the legislatures of the various states looking toward a uniform classification of accounts by such officers as state auditors or a uniform system of responsible accounting supervision by some public official." Mr. Powers had "not heard definitely from the bill in the State of Oregon," but the last that he heard was "that the bill would probably become a law." "The Tax Commission of Wisconsin had recommended the adoption of the Ohio law for uniform accounting. Numerous commercial bodies had also passed recommendations to the

same effect. Governor Beckham, of Kentucky, called attention to the subject in a message. The movement has taken on quite active form in the states of Massachusetts, New York, Pennsylvania, Kentucky, Illinois, Kansas, Nebraska and Michigan, and in all of those states, there is a more or less active propaganda working for the early enactment of legislation " on the subject of a uniform system of accounting.

"The most active commercial body working for this end is the Ohio State Board of Commerce." Another very strong commercial body working for the same end is the Merchants' Association of New York City, which contemplates taking active steps "to advance the movement before the next session of the legislature of that state. . . . Many public-spirited men are carefully studying the operation of the law in Ohio, with a view of determining how far the sweeping provisions of that act should be supported in any proposed legislation." In the judgment of Mr. Powers, "if the management of the office of public supervisor of accounts in Ohio meets with general favor in that state in the next year or two, more will depend upon that," in his opinion, "than any other single factor."

The committee has received through the courtesy of Mr. Clinton Rogers Woodruff, Secretary of the National Municipal League, the following papers :

"The Municipal Accounts of Chicago, a paper read by Charles Waldo Hoskins, Dean of New York University School of Commerce, Accounts and Finance, at the seventh annual meeting of the National Municipal League."

"The Report of the National Municipal League Committee on Uniform Municipal Accounting and Statistics, by Dr. Edward M. Hartwell, of Boston, Chairman of the Committee."

"Supplemental Report relating to a System of Municipal Accounts for the City of Chicago, Ordinances, dated November 20, 1901, to Hon. Carter H. Harrison, Mayor et al."

"City of Boston Statistics Department, Receipts and Expenditures of the City of Boston and the County of Suffolk for the

fiscal year 1900-1901, grouped according to the Uniform System of the National Municipal League."

"Chicago Accounting Reform, by Frederick A. Cleveland, Ph. D., Wharton School of Finance and Commerce of the University of Pennsylvania, a paper read before the Ninth Annual Conference of the National Municipal League."

"Uniform Municipal Accounting and Statistics, read at the Detroit Conference (1903) for Good City Government by Dr. Edward M. Hartwell, of Boston, Chairman of the National Municipal League Committee on Uniform Municipal Accounting Statistics."

"Defects of the Financial Statements of the City of New York, with suggestions for improved forms, a report to the Commissioners of Accounts."

"City of Boston, monthly Bulletin of the Statistics Department, July, 1903."

"Uniform Municipal Accounting. Minutes of the Conference held in the city of Washington, November 19 and 20, 1903, under the auspices of the United States Bureau of the Census."

A perusal of this material justifies the conclusion "that this question of good public accounts and the adoption of a correct system of accounting and supervision is one of vital concern to the people of every part of this nation," and while uniformity in such system is greatly to be desired, the committee doubts if it would be practicable for this Conference to draft any uniform bill for adoption by the several states. It might adopt a resolution recommending that each state enact a fiscal law providing for such correct system of accounting and supervision. The committee, however, believes it is "rather outside of the field of this Conference to attempt anything substantial along the lines indicated. If, indeed, it were expected that the respective states would by statute prescribe forms for public accounting, then, indeed, it might be appropriate for this Conference" to aid in having such statutes made uniform. But so long "as the only expected legislation is for

each state to appoint some public officer with authority to arrange and prescribe forms for use in his state," it does not, in the judgment of the committee, seem "that the work of securing the enactment of such laws is quite within the field of duty of this Conference, however desirable such laws may be and however properly the securing of their passage may lie within the field of the National Municipal League" or other associations specially organized to secure good city government. "There is no special need for uniformity in the laws of the different states appointing supervisors of public accounts, and the governmental framework of the different states varies so much that hardly any two of such laws could well be quite alike." The "getting such supervisors after their appointment to make their forms harmonious with those in use in other states" may also be desirable, but such labor is hardly within the field of uniform legislation to be recommended by this Conference.

The committee, therefore, asks to be discharged from the further consideration of the subject.

WILLIAM H. STAAKE,  
*Chairman,*

WM. E. CUSHING,  
FRANK M. HIGGINS.

# SHOULD THERE BE A FEDERAL INCORPORATION LAW FOR COMMERCIAL CORPORATIONS ?<sup>1</sup>

BY

HORACE L. WILGUS,

OF THE UNIVERSITY OF MICHIGAN DEPARTMENT OF LAW, ANN ARBOR, MICHIGAN.

I have been asked to talk to you upon the subject: Should There be a Federal Incorporation Law for Commercial Corporations? Of course, the national government must approach the matter from the side of interstate commerce, and the answer depends in some measure upon the character of such a law; yet it seems to me almost any reasonable law would be an improvement over existing conditions. Assuming, therefore, that a fair law could be obtained, after considerable study

<sup>1</sup> The Hon. Henry W. Palmer, member of Congress from Pennsylvania, introduced into the House of Representatives at the last session a bill (58 Cong., H. R. 66, Nov. 9, 1903) for a national incorporation law. The writer also prepared a somewhat more elaborate bill, along the lines indicated in this paper, which was printed in full in the Michigan Law Review, April, 1904.

*Bibliography:* For those interested in the matters discussed in this paper the following short bibliography is given: *Official Papers:* Arguments of Hamilton, Jefferson and Randolph; the speeches of Madison, Crawford, Clay and Calhoun; the reports of Hamilton, Gallatin and Dallas and House and Senate committees on a national bank, all given in Clarke & Hall's Documentary Hist. of U. S. Bank (see index); Wilson's Arguments on Bank of N. A., 1 Wilson's Works, p. 558; Gallatin's Report on Internal Improvements, 1808, Am. State Papers, Miscellaneous; Reports Committees on Interstate Commerce, 1868 (Serial No. 1352, Doc. No. 57); 1874 (Windom, 1589-307); 1878 (Reagan, 1822-245); 1886 (Cullom, 2356-46); bills and debates in Congress relating to trusts, 1885-1902, 57 Cong., 2d Sess., Sen. Doc. 147; Industrial Commission Reports (index and vol. 19, 595-722); Richardson's Messages of the Presidents (index).

*Cases of special importance:* McCulloch vs. Maryland, 4 Wheat. 316; Osborn vs. Bank, 9 Wheat. 738; Luxton vs. N. R. Bridge Co., 153 U. S. 525; Gibbons vs. Ogden, 9 Wheat. 1; Lottery Cases, 188 U. S. 321; U. S.

I am in favor of such a policy, and mainly for two reasons: Such a law would be beneficial to the business interests of the country, and such a law is necessary to the proper regulation of interstate commerce. I believe, further, that the federal government has the power to enact such a law, without constitutional amendment, and that such a policy would not only be a wise one, but one in complete accord with the fundamental ideas of our government. I shall therefore consider the *utility* of such a law, the *necessity* for enacting such a law, the *power* to enact such law, the *policy* of such a step.

### I. UTILITY.

It has been said that ninety per cent. of our business is done through the agency of corporations. Whether this is true or not, we all know that the vast bulk of the interstate and foreign commerce is carried on by corporations. Our internal commerce amounts to \$22,000,000,000 yearly, and is not only nine times that of our foreign, but in fact is equal to the entire

*vs. E. C. Knight Co.*, 156 U. S. 1; *Addystone Pipe Co. vs. U. S.*, 175 U. S. 211; *Northern Securities Co. vs. U. S.*, 193 U. S. 197.

*Magazine references:* Albany L. J., 64:7, 170, 379; Amer. Ec. Assn. Pub., 2:236; Am. J. Sociol., 9:208, Am. Lawyer, 8:111, 11:61; Am. Law Rev., 21:258, 24:25, 29:59, 889, 33:514, 34:186, 37:703, 38:209; Am. Legal News, Sept., 1904; Arena, 22:191, 412, 28:94, 449; Cent. L. J., 54:205, 55:144, 56:241, 349, 57:25, 145, 203, 58:241; Chautauquan, 36:3, 230; Chi. L. J., 19:379, 739; Chi. L. N., 35:213; Columbia L. R., 3:168 *et seq.*, 4:83, 315; Com. & F. C., July 2, 1904; Cosmopolitan, 36: editorial; Forum, 11:524, 17:207, 18:704, Green Bag, 14:460, 16:80, 258; Harv. L. R., 4:221, 16:79, 476, 539, 17:20, 41, 83, 146, 151, 156, 217, 248, 289, 474, 533; Journal Polit. Ec., 12:79; Mich. L. R., 1:251, 2:358, 501; Nation, 77:337; Natl. Corp. Rep., 25:418, 27:376, 29:167 *et seq.*; North Am. R., 175:877, 178:499; Nineteenth Cent., 35:1033; Outlook, 72:880; Polit. Sc. Q., 12:622, 18:1, 462, 599, 19:50, 376; Quart. J. Ec., 2:162; Rev. of Rev., 26:467, 27:266; Yale L. J., 11:273, 387, 12:117, 13:57, 578.

*Bar Association Reports:* Ala., 1890:142; American, 1887:332, 1888:247; Illinois, 1888:41, 1890:67; New York, 4:207; Tenn., 1887:175; W. Va., 1895:140.

Bibliographies of Trusts are published by Library of Cong. (Griffin), also in 9 Indus. Com. R., 1080, and 13 *Ib.*, 947.

international commerce of the world.<sup>2</sup> As to our interstate commerce, we have in fact become one nation, though in the legal rules controlling it we are forty-eight independent states and territories. Our federal government was formed largely to secure uniformity of commercial regulations, both interstate and foreign. For this purpose it was given the power to regulate commerce, to establish post offices and post roads, to establish uniform rules on the subject of bankruptcy, to coin money and regulate the value thereof in order to insure uniformity. It is unnecessary to argue the utility of uniformity in commercial regulations to a body of lawyers, for it is the lawyers who have urged and secured such uniformity in the case of bankruptcies<sup>3</sup> and negotiable instruments.<sup>4</sup> The questions relating to the business corporation doing an interstate business are of a similar kind. Uniformity here would be beneficial both to the corporation and to the one dealing with it.

The charter of the corporation is a law of the state creating it, and whoever deals with it is conclusively presumed to know its contents so far as they may affect any contract made with it, for ignorance of the law excuses no one.<sup>5</sup> If one buys a ticket from New York to San Francisco, his contract rights vary with the charters of the half dozen roads over which he passes; if he contracts for steel in any state of the union, his rights probably depend upon the New Jersey law; if he contracts to buy oil, his rights will depend not wholly on the law of the state where the transaction occurs, but upon the provisions of the Standard Oil Company's charter; if he rides

<sup>2</sup> Address Mr. O. P. Austin, Chief Bureau Statistics, Rochester, N. Y., Jan. 7, 1904; N. Y. Independent, Oct. 20, 1904, p. 936.

<sup>3</sup> Eastman, S. C., Bankruptcy, preface; J. W. Olmstead, 15 Harv. L. R. 827.

<sup>4</sup> L. D. Brewster, Am. Bar Assn., 1898, p. 315; J. W. Eaton, 21 N. Y. Bar Assn., 100; Huffcut's Neg. Ins., p. 117 *et seq.*

<sup>5</sup> See Wilgus, Cases Corporations, vol. 1, p. 406; vol. 2, pp. 1179, 1209. Central Trans. Co. *vs.* Pullman Pal. Car Co., 139 U. S. 24; Lucas *vs.* White Line Trans. Co., 70 Ia. 541, 59 Am. R. 449; *In re Assignment Mut. Ins. Co.*, 107 Ia. 143, 70 Am. St. R. 149, note 156, Elliott, § 212-3; Morawetz, § 591-2; Taylor, § 264; 5 Thompson, § 5973; 7 *Ib.*, § 8309.



over the Southern Pacific Railroad in California, his rights are measured largely by the laws of Kentucky;<sup>6</sup> at least seven different views exist as to the extent of the duty to receive and transport freight safely from state to state,<sup>7</sup> without considering any qualifying charter provisions; if a foreign corporation does business in a state without complying with the laws as to filing its articles or designating an agent upon whom service of summons may be made, the contract is valid as to both parties in some states, void as to both parties in others, unenforceable by the corporation, but enforceable by the other party in still other states;<sup>8</sup> if one becomes an officer or director in foreign corporations, his rights, duties and liabilities will be as various as the laws of the states where such corporations are formed, though they are engaged in the same business;<sup>9</sup> if one is a shareholder in a Missouri corporation, he may be called on to pay up his stock in full, though it may be contrary to his contract and to his principles, practices and the law elsewhere.<sup>10</sup> He is likely to find his shares taxed to him and to the corporation also in some form or other where it is incorporated.<sup>11</sup> He will find, too, if he takes shares in some state-created corporations that the directors can do nearly everything they are forbidden to do by the law of the state where he lives.<sup>12</sup> If he

<sup>6</sup> This is because these corporations are incorporated in the state indicated.

<sup>7</sup> See article by E. P. Prentice, *Origin of Right to Engage in Interstate Commerce*, Harv. L. R., Nov., 1903, p. 32.

<sup>8</sup> See 2 Wilgus, Corp. Cas. 1510, note 1512; *Marshall, Corp.*, p. 1186 *et seq.*; *Cook, Corp.*, 5th ed., §§ 696-700, p. 1677.

<sup>9</sup> *Cook, Corp.*, §§ 704-712; 2 Wilgus, Corp. Cas., 1727 *et seq.*; note 96 Am. St. R., 972, 989.

<sup>10</sup> *Van Cleve vs. Berkey*, 143 Mo. 109, 42 L. R. A., 593, 2 Wilgus, Corp. Cas. 1953.

<sup>11</sup> *Farrington vs. Tennessee*, 95 U. S. 679, 2 Wilgus, Corp. Cas., 1370; *Tappan vs. Merchants Bank*, 86 U. S., 490, 2 Wilgus, Corp. Cas., 1399; *Corporation Tax Laws*, pt. ii, Rept. Mass. Com. on Corp. Laws, 1903.

<sup>12</sup> For example, the New Jersey law, § 8, par. 7, enables three incorporators (who may be mere dummies of the future directors) to create any power, with very few exceptions, and confer it upon the directors. Under this law the U. S. Steel Corp. was organized with the maximum power

holds stock in a California corporation, he can inspect the books even for an improper purpose,<sup>13</sup> while in others he cannot do so without the consent of directors.<sup>14</sup> In some states the original holder of shares is relieved from liability on the shares by the transfer thereof; in others he continues liable for debts incurred while a shareholder; in others, not only for these, but for future debts contracted within a year afterwards or upon default of the transferee.<sup>15</sup> If he is a creditor of a foreign corporation, he may find the directors, contrary to the law of his own state, have preferred themselves as creditors to his exclusion,<sup>16</sup> or the shareholders have paid for their shares in grossly overvalued property without liability unless actual fraud is shown.<sup>17</sup> All the foregoing, or nearly all—all questions relating to the organization, amendment, internal control, rights, duties and liabilities of members and officers, the issue, payment and transfer of shares, duration, dissolution and winding up—affecting dealers, members and officers throughout the country, are determined by the law of the state where the corporation is formed and may differ materially from what such dealers, members and officers suppose is the law, judging from that of their own state.<sup>18</sup> All are susceptible of uniformity given to directors and the minimum left to shareholders. See Wilgus, *U. S. Steel Corp.*, pp. 53-7, 70-3.

<sup>13</sup> *Johnson vs. Langdon*, 135 Cal. 626, 67 Pac. 1050, 87 Am. St. R. 156.

<sup>14</sup> The *U. S. Steel Corp.* charter, art. vii, provides that "the board of directors from time to time shall determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders."—Wilgus, *U. S. Steel Corp.*, p. 53, 136.

<sup>15</sup> See the provisions of the statutes of the various states collected in the Report of the Massachusetts Committee on Corp. Laws, 1903, pp. 194-9, showing ten different classes of provisions on this subject.

<sup>16</sup> As in Alabama, see *Corey vs. Wadsworth*, 118 Ala. 488, 2 Wilgus, Corp. Cas. 1836, note 1841.

<sup>17</sup> See cases collected and classified in *State Trust Co. vs. Turner*, 111 Ia. 664, 82 N. W. Rep. 1029, 53 L. R. A. 136, 2 Wilgus Corp. Cas. 1943. Compare also *Shields vs. Hobart*, 172 Mo. 491, 95 Am. St. R. 529, 72 S. W. 669, and *Hall vs. Henderson*, 134 Ala. 455, 63 L. R. A. 673.

<sup>18</sup> *Marshall, Corp.* §§ 435, 436; *Cook, Corp.* §§ 696-700; 2 Wilgus, Corp. Cas. 1480 *et seq.*; *North State Copper & Gold Min. Co. vs. Field*, 64

under one general law, which with a little care could embody the desirable points of each. How much confusion and uncertainty would thereby be avoided and with how much less effort and anxiety could business be done?

The corporation, too, is often unduly hampered and greatly inconvenienced by conflicting state regulations. Its property and shares are taxed in as many ways as there are states in which it does business. Here the state officer values its property, there the local authorities do; here it is taxed on its paid up stock, there on its authorized stock; there again on its stock and bonded debt, and elsewhere on its gross receipts; in still other places on its net earnings, and elsewhere it pays specific taxes; here it pays the same as domestic corporations, there more.<sup>19</sup> Its franchises and intangible property are not infrequently subject to double, triple or quadruple taxation, and under the decision in the Horn Silver Mining case<sup>20</sup> it is within the power of each state in which a foreign corporation does business to tax it, under the form of a license fee, upon the whole of its capital stock, and not merely on that part used in the state. In Ohio, Indiana and elsewhere *express* horses and wagons are worth many times as much for taxation as the same things would be if owned by the farmers.<sup>21</sup> In one state in which corporations do business they must designate a certain officer upon whom summons may be served; in another, appoint the secretary of state for this purpose; in another, agree not to remove a suit to the federal court; in another, pay a license fee, if not engaged in interstate commerce, for the privilege of doing business in the state, much higher than domestic corpo-

Md. 151, 2 Wilgus, Corp. Cas. 1519; Guilford *vs.* W. U. Tel. Co., 59 Minn. 332, 50 Am. St. R. 407, 2 Wilgus, Corp. Cas. 1521.

<sup>19</sup> See Corporation Tax Laws of the States, Mass. Rept. Com. on Corp. Laws, 1903, pp. 206, 242-261, 295; 9 Indus. Com. R. 1006 *et seq.*; 19 *Ib.* 1058 *et seq.*; 2 Wilgus, Corp. Cas. 1370-1404.

<sup>20</sup> People *vs.* Horn Silver Min. Co., 105 N. Y. 76, 143 U. S. 305; 2 Thompson, Corp. ¶ 2900; 6 *Ib.* §§ 8101, 8102.

<sup>21</sup> Adams Express Co. *vs.* Ohio, 165 U. S. 194, 166 U. S. 185, 2 Wilgus, Corp. Cas. 1381.

rations do ; in another, file their articles of agreement and become domestic corporations before they can even sue in the state.<sup>22</sup> By doing this, however, their power to consolidate with another company, or to hold stock therein, or to hold their own shares, may be the opposite on these points in the two states.<sup>23</sup> So, too, the rights and liabilities of the shareholders in the two states may be seriously affected. Stockholders not originally liable when the corporation was formed may find themselves individually liable in other states for the wages of employees, or even for the double or proportional statutory liability.<sup>24</sup>

Also as to reports and police supervision, these will be as various as the states, or nearly so ; one state requires no report, and another requires even business secrets to be divulged ; some make the officers liable for all the debts if false statements are knowingly made, others make them liable to a fine and imprisonment.<sup>25</sup>

If they violate anti-trust acts in some states, it is called a tortious conspiracy ; in others, a misdemeanor. In some states the officers are required annually to make affidavit that their corporation is not a member of any illegal combination ; in some states the agent's acts are *prima facie* proof of corporate guilt. Penalties for officers vary from thirty days' to ten years' imprisonment ; individual fines, from \$50 to \$5000 ; corporate fines, from \$50 to 20 per cent. of the capital, and penalty of forfeiture or ouster from the state. In some states the prosecuting attorney gets part of the fine ; in others, the

<sup>22</sup> Clark & Marshall, Corp., vol. 3, §§ 844-9 ; 6 Thompson, Corp. §§ 7928-70.

<sup>23</sup> Noyes' Incorporate Relations, §§ 99-107 ; 1 Thompson, Corp. §§ 319-23 ; 2 Clark & M., Corp. pp. 1094, 1100 ; Marshall, Corp. pp. 491 *et seq.* ; Taylor, Corp., 5th ed., §§ 403-9 ; 1 Wilgus, Corp. Cas. 988 ; note 89 Am. St. R. 604.

<sup>24</sup> Pinney *vs.* Nelson, 183 U. S. 144 ; Staten Island R. R. *vs.* Hinchliffe, 170 N. Y. 473 ; Cook, Corp., 5th ed., § 213.

<sup>25</sup> Compare the laws of New Jersey and Pennsylvania as to reports required from corporations for purposes of taxation ; Wilgus, U. S. Steel Corp. 69 ; Cook, Corp., 3d ed., ch. lvi.

informer and the state or county the balance. In some of the states contracts are void; in others not. In some states a buyer of goods from such a combination need not pay for them, and one damaged may recover the price he pays for the goods; while others allow him treble damages.<sup>26</sup>

And so on. There is no need of further enumeration of details with which you are probably familiar and have often puzzled over for some anxious client and then given an opinion that you were very uncertain of yourself. There is scarcely any matter here that could not be uniform, and be better if *uniform* so far as affecting interstate commerce is concerned. But in these matters the policy of the states never will be in harmony. Situation, local pride, political bias, party politics, peculiar industries or financial interests produce and increase these differences. Upon the score of utility alone, I believe a national law would be desirable.

## II. NECESSITY.

The utility of uniformity in corporation laws, however desirable that may be, is not the main nor, to my mind, a sufficiently important reason for a national incorporation law. There are reasons of a much more fundamental kind, the *necessity* of such a law properly to regulate our interstate commerce "in order to promote the general welfare" of us all.

Nearly everybody admits there is a *trust problem*, but there are divergent views as to what the problem is. With the trusts themselves the problem is, mainly, how to be let alone; with the hysterical, how to destroy them at once; with the more sober-minded, what is good or bad in them and how to devise means to preserve the former and remove the latter. Some say there is nothing amiss. These are usually, though not always, the anointed beneficiaries of some trust whose cup runneth over. There is, upon the other hand, "the tale of woe" of thousands of sufferers throughout our land, coming from the depths of experience, that tells a very different story. Ever

<sup>26</sup> See charts, tabulating state anti-trust acts, 2 Indus. Com. R.

since the investigations following the granger agitations some years ago legislative and congressional committees, economic writers, political platforms, trust conferences, commerce commissions, industrial commissions, governors and presidents have with one accord testified and proclaimed that there exist vast and serious abuses in our industrial life.<sup>27</sup> Numerous reports have made reasonably clear what these are and how they have arisen, but have been indefinite and conflicting as to proper remedies. I happen to be among those who believe there is much amiss; that this is due largely to certain *legal* conditions, present and past, and that these can be so changed as to give adequate remedy.

The leading legal conditions under which the problem has developed have been :

(1.) The enormous growth of corporations and corporate power.

(2.) Their power to engage in interstate commerce.

(3.) The inaction of Congress in regulating such commerce.

(4.) The inability of the states to cope with the difficulty.

1. *As to the first, growth of corporations.*

It is necessary to recall a few facts to get our bearings properly. The material results of the past century are almost incredible. In it man has acquired greater control over the forces of nature than during all the ages preceding. Never, since he was given dominion over the whole earth, has he entered into the possession of his inheritance in the same way and to the same extent.<sup>28</sup> In the last seventy years the wealth

<sup>27</sup> See reports: H. R. Com. on Roads and Canals, 1868, Serial No. 1352, Doc. No. 57; Windom's Report, 1874, S. No. 1589, D. No. 307; Reagan's Reports, 1878-86, 1822-245, 2047-55, 2069-1399, 2254-596, 2437-902; Cullom Report, 1886, 2356-46, 2450-12; Hepburn Rept. N. Y. 1879; N. Y. Repts., Senate Docs. 1888, vol. 5, No. 50; 1889, No. 64; 1897, vol. 7, No. 40; U. S. House Rep. Rept. 1888, 3112; 1889, 4165; Chicago Trust Conference, 1899; Industrial Commission Reports, 1900-1901; Interstate Commerce Commission Reports, 1888-1904; Party Platforms, World Almanac, 1903, pp. 102-3; American Almanac, 1904, pp. 87-93.

<sup>28</sup> See Wilgus, The Trust Problem, in the Inter-Collegian, 1903, p. 146.

of this country has increased from less than four to over ninety-four billion dollars, from less than three to over twelve hundred dollars per head.<sup>29</sup> So conservative a writer as Carroll D. Wright has said the wage earner has not received his equitable relative share. The safest authorities agree that while all have grown richer, the rich have done so at a much faster rate than the poor.<sup>30</sup> A half century ago the great individual fortunes were measured by a few hundred thousands. For many years the millionaires have rapidly increased, and now there are probably billionaires. It is not the state's function to produce or distribute wealth, but it is properly its function by just and equal laws to foster the economic production and equitable distribution of wealth.<sup>31</sup> In doing this it very properly creates or authorizes the creation of corporations, and what steam and electricity have been to the material world the corporation has been to the business world, the one greatest and most efficient machine yet devised to strengthen the hands of man and add energy to his capital. Its very nature and efficiency make it also peculiarly susceptible of abuse, and the state that gives the privilege should provide reasonable protection against and adequate remedy for such abuse.

Before the formation of the Constitution there seem to have been only twenty-one business corporations incorporated in the United States. The Constitution put commerce on a solid footing, and before 1800 more than 200 more corporate charters had been granted.<sup>32</sup> The Constitution provided, "No state shall pass any law impairing the obligation of contracts."

<sup>29</sup> *Ib.*, p. 147.

<sup>30</sup> *Ib.*, p. 147-8; N. Y. Independent, May 1, 1902; Mulhall, 140 N. A. R. 78; Century, January, 1901 (Wright); *Ib.*, February, 1901 (Thurston); Report Massachusetts Bureau of Labor, 1894; The Distribution of Wealth, Dr. Chas. B. Spahr; 15 Arena, 654-64 (Waldron); 17 Arena, 82-96 (Pomeroy); Who Owns the U. S.? World's Work, Dec., 1903.

<sup>31</sup> H. C. Adams, Relation of the State to Individual Action, p. 8; Herbert Spencer, "The Man *versus* the State."

<sup>32</sup> Hon. S. E. Baldwin, in Two Centuries of Growth of American Law, Yale Bicent. Pub., pp. 275, 296.

In 1819 the Dartmouth College case<sup>33</sup> decided that this applied to corporate charters, and the state could not afterward repeal or amend the same without it reserved the right or the corporation consented. Prior to about 1830 the improvident increase of corporations was looked upon as an evil. It had been the early policy of the federal government from about 1800 to construct or aid in the construction of ways of internal communication between the states. In 1822 President Monroe vetoed this policy on constitutional grounds. The states then immediately took up the matter, and within fifteen years had utterly failed, and state repudiation followed. For doing what the government could not do and the states failed to do, the people turned to the private corporation. The era of the corporation had begun.<sup>34</sup> To prevent the corruption attending the grant of special charters and in order that all might share in the privileges granted, general incorporation laws were passed allowing a few persons in a very simple way to become incorporated with valuable franchises and privileges subject to very slight control or supervision. Liberal encouragement by tax exemptions, state aid or land grants was made.<sup>35</sup> Such corporations immediately began the work of construction of our ways of internal communication; and though an endless amount of speculation, fraud and loss accompanied the work, the benefits were so great and so apparent that most of the evil was palliated or excused. The war brought to the front men of great energy, great capacity, great deeds, great daring and great ambition. At its close many of the greatest of these found a field for their energy and ambition in building up the railroad system of the country. Congress in 1866 enacted the law that has been called the "Charter of the American Railway System," authorizing every steam railroad "to connect with roads of other states so as to form continuous lines for the

<sup>33</sup> 4 Wheat. 518.

<sup>34</sup> Meyer, *Railway Legislation in the U. S.*, pp. 25-8.

<sup>35</sup> *Ib.*, pp. 71, 99, 108; J. B. Sanborn, *Congressional Grants of Land in Aid of Railways*, *Bul. Univ. of Wis.*, vol. 2, No. 3, in *Econ. Pol. Sc. and Hist. Series*.



transportation" of freight and passengers from one state to another. Railroad consolidations immediately began.<sup>36</sup> Before 1870 scarcely any system was over 1000 miles; between 1870 and 1890, 5000-mile systems were formed; between 1890 and 1900, systems became 10,000 miles or more, and now the five principal systems control 150,000 miles or more, and a late authority says that practically nine men control over eighty per cent. of the total railway mileage of the country.<sup>37</sup> The concentration in the industrial and financial fields, though it commenced later, has been even more rapid. Prior to 1870 only two industrial trusts, formed by combination of formerly competing concerns, existed with a capital of \$13,000,000; from 1870 to 1880, four more were added with \$135,000,000 nominal capital; 1880 to 1890 added 18 more with \$228,000,000; the next ten years showed 183 with nearly \$4,000,000,000 capital, and a recent authority says there are 850, not counting railroad mergers, with a nominal capitalization of \$9,000,000,000.<sup>38</sup> Mr. Moody in "The Truth about Trusts" enumerates Industrial, Franchise, Transportation and Miscellaneous now operating as numbering 445, formed out of 8664 original companies and having a capitalization of over \$20,000,000,000, nominally equal to about one-fifth of the total wealth of the United States. These vast sums are even less important than the concentration of control and extent of operation. The twenty-four directors of the United States Steel Corporation control a sum nominally equal to one-twelfth of the total wealth of the United States in 1900. These same men are the influential directors in more than 200 affiliated companies

<sup>36</sup> June 15, 1866, 14 St. at L. 66, R. S., § 5258; note 2 Wilgus Corp. Cas. 1507.

<sup>37</sup> See Wilgus, U. S. Steel Corp., p. 107; Com. & F. Ch. Supp., April, 1901; Rev. of Revs., Aug., 1901; World's Work, April, 1901, p. 676; 19 Indus. Com. Rept. 306; E. R. Johnson, American Rwy. Transp.

<sup>38</sup> Wilgus, The Trust Problem, Inter-Collegian, 1903, pp. 136-9; Wilgus, U. S. Steel Corp., pp. 2, 5, 20; 2 Current Encyc., 1902, p. 1312; U. S. Census of Mfg. Abstract, 1900, p. 328; World Almanac, 1897-1903; American Almanac, 1904; Moody's Corp. Manual, 1903; Moody's Truths About Trusts.

that operate half the railroads of the country; dig and carry most of its iron, coke and coal. They control the greatest oil, copper, sleeping car, telegraph, express, bridge, traction and shipping interests of our country; also the five greatest insurance companies, nine of the greatest banks and sixteen of the largest trust companies, with their chains of affiliated banks throughout the country—in all, corporations with nominal capitalizations of about \$9,000,000,000—and two men are said to be leading spirits in the control of much the larger part of this.<sup>39</sup>

Some of these industrial institutions operate plants in half the states, and the Standard Oil wagon is seen in every village and hamlet in the land. Through the interholdings of shares the most diverse interests are controlled in harmony; by means of a holding corporation, combinations of combinations, unlimited in extent, operation and duration are formed which may act with a directness, speed and certainty greater, affecting a larger territory in a shorter time without warning and with less responsibility than the act of any legislature in the world.<sup>40</sup> In short, the main forces and instruments of commerce are vested in a few state-created corporations that are federal in operation, federate in organization and imperial in power.

2. *Power of corporations to engage in interstate commerce.* The fact that they do engage in interstate commerce is no less certain than their legal right to do so. This right, however, they hold under the federal government. By the common law a corporation was a *person*, and though it could not migrate, it might by agents do business away from home, if its own charter did not *forbid* or the state where it sought to do business did not object.<sup>41</sup> The right of a corporation to sue in the

<sup>39</sup> World's Work, Dec., 1903, Who Owns the U. S. ?

<sup>40</sup> Wilgus, The Trust Problem, Inter-Collegian, 1903, pp. 130-6, describing the various forms; Wilgus, U. S. Steel Corp., pp. 94-102, giving a diagram of the internal arrangements of the U. S. Steel Corp.; Noyes's Intercorporate Relations.

<sup>41</sup> Cook, Corp., 5th ed., § 696; Tootle vs. Singer, — Ia. — 88 N. W.

courts of another state was recognized in 1809<sup>42</sup> by our Supreme Court, and in 1839 the same court held that a bank organized in one state could discount bills in another state unless the latter objected.<sup>43</sup> These only confirmed what had long been the accepted doctrine and practice. The power to regulate commerce was taken from the states and conferred upon the federal government by the Constitution. If a corporation had an inherent capacity to do business away from home, and the business to be done was interstate commerce, then it could be done in any state without the state's consent. This was acted upon from the beginning and has been affirmed by the decisions which hold no state can prevent a corporation engaged in interstate commerce from entering that state and carrying on that business therein<sup>44</sup> or require it to pay for the privilege of doing so.<sup>45</sup>

3. *Inaction of Congress.* In 1824 in the case of *Gibbons vs. Ogden*,<sup>46</sup> Chief Justice Marshall said the power to regulate commerce, "like all others vested in Congress, is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution." From this it followed, as has been held time and time again, that "*where the subject is national in character and admits or requires uniformity of legislation,*" "*the absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free.*"<sup>47</sup> Prior to 1887, Congress had enacted pilot laws, made all railroads post roads in 1838, authorized the construction of many interstate bridges, improved water courses, incorporated railroads and

446; *Lancaster vs. Imp. Co.*, 140 N. Y. 576; *People vs. Fidelity Co.*, 153 Ill. 25; *Merrick vs. Van Santvoord*, 34 N. Y., 208.

<sup>42</sup> *Bank of U. S. vs. Deveaux*, 6 Cr. 61.

<sup>43</sup> *Bank of Augusta vs. Earle*, 13 Pet. 519.

<sup>44</sup> *Crutcher vs. Kentucky*, 141 U. S. 47, 1891, Bradley, J.

<sup>45</sup> *Atlantic & Pacific Tel. Co. vs. Philadelphia*, 190 U. S. 162, 1902, Brewer, J.

<sup>46</sup> 9 Wheat. 1.

<sup>47</sup> *Cooley vs. Port Wardens*, 12 How. 299; *Robbins vs. Taxing Dist.*, 120 U. S. 489.

passed the continuous line act of 1866, all to facilitate interstate commerce; but not in any other way to regulate any abuses that had arisen. In 1887 the Interstate Commerce Commission was created, to be emasculated into an investigating and recommending body by decision in 1897. In 1890 the Anti-Trust Act was passed to regulate the interstate industrial trusts, but the lower courts in 1892 held it did not apply,<sup>48</sup> and this was affirmed so far as manufacturing is concerned by the Supreme Court in 1895.<sup>49</sup> The Anti-Rebate Act and the Department of Commerce Act, passed last year, completed the list of congressional action. In 1899, after twelve years of the Interstate Commerce Act, the commission said the railway "situation has become intolerable both from the standpoint of the public and the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain."<sup>50</sup> And last year the commission said: "The means for giving practical effect to the mandate of the law are concededly imperfect."<sup>51</sup> After fourteen years of the Anti-Trust Act, it has been held it does not prevent the combinations of manufacturers as such, but only such contracts thereof as directly affect their interstate commerce. So far it does not seem to have hampered their existence or operation to any great extent. It was supposed after the traffic associations decisions that the law prevented the formation of railroad combinations. These decisions, however, had the effect of driving them into the more stable forms of the holding corporation or interholdings of shares.<sup>52</sup> The Securities decision leaves the effect of the first uncertain and does not touch upon the latter. The net result of the fourteen or fifteen years of these methods of *regulation* by the government is to show that regulation through anti-trust, anti-con-

<sup>48</sup> U. S. *vs.* Greenhut, 51 Fed. 205, 213.

<sup>49</sup> U. S. *vs.* E. C. Knight Co., 156 U. S. 1.

<sup>50</sup> Interstate Commerce Com. Rept., 1898, pp. 5-6; *Ib.* 1899, p. 8.

<sup>51</sup> *Ib.* 1902, pp. 6-7.

<sup>52</sup> Wilgus, The Northwestern Railway Situation, 1 Mich. L. R. 251; 19 Indus. Com. Rept. 329.

tract in restraint of trade, anti-monopoly, anti-rebate and interstate commerce acts is long, uncertain, inefficient and inadequate in the end and may destroy the very thing, as in the case of railroad mergers, which if properly regulated is perhaps desirable and necessary for all.

4. *Inability of the states to cope with the difficulty.* This follows from what has already been said. Commerce has become national in extent and is conducted by corporations national in operation and imperial in power. The states cannot control these, first, because the Constitution has taken away the power over the subject matter; second, because if the states had the power, it would be impossible to secure the requisite uniformity; and, third, if the legal authority existed in the states, the corporations are so big and powerful as to make it practically impossible to secure adequate control.<sup>53</sup>

*As to the subject matter,* the commerce, according to the decisions a state cannot exclude a corporation engaged in interstate commerce,<sup>54</sup> nor tax such commerce,<sup>55</sup> nor tax the agents engaged in it,<sup>56</sup> nor fix the rates for carrying it,<sup>57</sup> nor exclude articles of such commerce,<sup>58</sup> or persons coming into<sup>59</sup> or going out of the state.<sup>60</sup>

*As to the uniformity necessary:* Much has already been said as to the existing diversity of state provisions.<sup>61</sup> It is often said that a state can and does retain control over its own corporations. This is legally true, though in many cases

<sup>53</sup> 19 Indus. Com. Rept., pp. 642-3.

<sup>54</sup> *Pensacola Tel. Co. vs. W. U. Tel. Co.*, 96 U. S. 1; *Cooper vs. Ferguson*, 113 U. S. 727.

<sup>55</sup> *Brown vs. Md.*, 12 Wheat. 419; *Philadelphia Steamship Co. vs. Penn.*, 122 U. S. 326.

<sup>56</sup> *Robbins vs. Shelby Taxing Dist.*, 120 U. S. 489.

<sup>57</sup> *Wabash etc. Ry. Co. vs. Illinois*, 118 U. S. 557.

<sup>58</sup> *Bowman vs. Chicago & N. W. Ry.*, 125 U. S. 465; *Collins vs. New Hampshire*, 171 U. S. 30.

<sup>59</sup> *Chy Lung vs. Freeman*, 92 U. S. 275; *Japanese Immigrant Case*, 189 U. S. 86, 97.

<sup>60</sup> *Crandall vs. Nevada*, 6 Wall. 35.

<sup>61</sup> In addition to references given above, see Meyer, *Railway Legislation in U. S.*, ch. iv; Rept. Mass. Com. on Corp. Laws, 1903, pt. ii.

practically impossible because of interstate affiliations and operations. Besides, the state's authority over foreign corporations engaged in commerce in the state is practically nothing. The commerce that is national in extent requires *uniformity* of regulation to secure proper results for all. The commerce and the corporations that carry it on are so related that attempts by the national government to regulate the commerce and by forty-five state governments to regulate the corporations that carry it on are by the nature of things doomed to failure. These things, though separable in the mind, are inextricably bound together in fact, and what are so bound together man cannot put asunder and yet properly regulate both. As Judge Grosscup says: "The problem before us is not how to destroy the corporation nor how to hamper it or to trip it up, but to make it a helpful servant to the uses of mankind. . . . The first step to this end and the great step is to nationalize the corporation. Five and forty masters now ordain its policies. It should be governed by one master and one policy. The corporation is no longer the sole concern of the state where its books happen to be kept or its directors meet. It has become the concern of the whole country over which its enterprises reach. The day of the New Jersey policy is gone, and the New York policy, and the Iowa policy; the day has come for an American corporate policy." Further, it is idle to believe that the requisite uniformity will ever be attained by leaving it to the states. *Unanimity* of state action is necessary in order to be effective; never can nor will such action be had. If one state enacts proper laws and enforces them, it only shuts itself out of benefits shared by others. If Minnesota had succeeded in her case against the Securities Company and she had pushed her remedy to its limit of efficiency, she would only have succeeded in keeping the Great Northern and Northern Pacific separate in that state and cutting these great transcontinental lines into sections limited by the state boundaries. The same would be true of other states, and if they had full power, each acting for itself, the only remedy one state

could enforce without the co-operation of other states would be to break our interstate roads into state sections under separate state companies, making the remedy worse than the disease. Still further, just as one state, before the Constitution, could by its commercial regulations disturb the harmony of the whole, so now one state, by creating a state corporation, clothed with the power to engage in interstate commerce everywhere, can disturb or defeat any uniform rule the other states might make.

*Again, the corporations have become too big and too powerful for effective state control. The net earnings of the United States Steel Corporation in a year are more than the total sum raised by revenue taxation in our greatest states, and in 1902 their gross receipts were more than the total ordinary receipts of the national government in any year prior to 1899. As General Garfield said thirty years ago, the railroad and telegraph systems have passed from the control of the states. Their efforts have been little more than feeble annoyance and have been treated as impertinent intermeddling. The corporations are conscious of their strength and have entered upon the work of controlling the states ;<sup>62</sup> or, as a committee of the American Bar Association said last year, "The only possible competitor for a billion dollar trust is a hundred billion dollar state."<sup>63</sup>*

All will admit that such conditions, to say the least, are not healthy, and to most minds they appear to be fraught with danger to our common welfare. As has been aptly said: "Men are mortal and their combinations short-lived, but corporations are immortal and their combinations and acquisitions may go on forever. They may add field to field, wealth to wealth and power to power till they become too strong for the government itself. All experience shows that such accumulations of wealth and power are dangerous to the public wel-

<sup>62</sup> The Future of the Republic, J. A. Garfield, 2 works, p. 61.

<sup>63</sup> Rept. Com. on Commercial Law, Am. Bar Assn., 1903, p. 18.

fare.”<sup>64</sup> There is no doubt that Judge Dillon, in commenting upon the Securities decision, voiced the feeling of the most conservative when he said: “Uncontrolled power in a few men by any form of corporate device to control the railway systems of a great country is a power too great to be compatible with the public weal and one which would not be permanently endured by the people.”<sup>65</sup>

The methods whereby such institutions have been built up make the danger still more apparent and indicate the things to be regulated. From the investigations of our various commissions during the past twenty years, it has been made certain that the particular devices whereby evil is wrought or danger threatened have been mainly five: (1) The acquisition, practically, of monopoly power either by grant of franchise of various kinds or through *discrimination* in transportation charges; (2) the destruction of legitimate competition by the *predatory competition* of the holders of monopoly power; (3) the acquisition of monopoly power through the *interholding of corporate shares*; (4) the *overcapitalization* of corporations, and (5) *dishonest* and irresponsible corporate *promotion and management*.

The first two are matters of commerce and the last three of corporation law, and any regulation worthy of the name must include all and be a part of one system. For the government to regulate, or attempt to regulate, the commerce of any corporation, and the states its interholding of shares in other corporations, is worse than useless and only results in *corporate regulation* of commerce instead of either state or national regulation. If our diagnosis is correct, the national government does not, the states cannot uniformly and the big corporations do control our industries and commerce. The thing then to be *regulated*, but not necessarily destroyed, is the big thing, the big *menacing* corporation. Its national commerce is to be

<sup>64</sup> Brunswick G. L. Co. vs. U. S. Gas Co., 85 Me. 532, 35 Am. St. R. 385, 1 Wilgus Corp. Cas. 1071.

<sup>65</sup> New York Herald, March 15, 1904.



regulated, its holding of stock in other companies is to be regulated, its power to consolidate is to be regulated, its issue of shares is to be regulated, its promotion and organization are to be regulated, its capitalization is to be regulated, its competition with others throughout the country is to be regulated. These are the things necessary to be done for the welfare of all. If done at all, they can be done satisfactorily only through a uniform system dealing with the whole problem enforced by adequate power. The states cannot do this. Can the national government?

### III. POWER OF THE NATIONAL GOVERNMENT.

This depends upon the power of Congress over commerce and the power to create corporations.

The Constitution says Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes. Mr. Justice Harlan, in the Lottery case,<sup>66</sup> after an extensive review of the cases from *Gibbons vs. Ogden*<sup>67</sup> to *Hanley vs. Kansas City Southern Ry.*,<sup>68</sup> concludes that "Congress alone has the power to occupy, by legislation, the whole field of interstate commerce."

Commerce includes the *subject matter* of traffic and intercourse, the *fact* of traffic and intercourse and the *instrumentalities* by which it is carried on.<sup>69</sup>

The *subject matter* may be "things, goods, chattels, merchandise or persons," or telegraph messages.<sup>70</sup>

The *fact of intercourse* includes the negotiation of the sale of goods which are in other states whether by solicitor or sample,<sup>71</sup> the *purchase* of goods between citizens of different states

<sup>66</sup> 188 U. S. 321, 1903.

<sup>67</sup> 9 Wheat. 1, 1824.

<sup>68</sup> 187 U. S. 617.

<sup>69</sup> As to what is included in Interstate Commerce, see note 2 Wilgus, Corp. Cas., p. 1504.

<sup>70</sup> *McCall vs. California*, 136 U. S. 104; *Lottery Cases*, 188 U. S. 321; *Telegraph Co. vs. Texas*, 105 U. S. 460, 2 Wilgus, Corp. Cas. 1397.

<sup>71</sup> *Cooper vs. Ferguson*, 113 U. S. 727; *Robbins vs. Taxing Dist.*, 120

made in either state,<sup>72</sup> communication between persons by the transmission of intelligence by telegraph<sup>73</sup> or telephone,<sup>74</sup> the transit of persons<sup>75</sup> or the transportation of persons or of property by boat, by rail,<sup>76</sup> by express,<sup>77</sup> or the piping of oil or gas,<sup>78</sup> or driving of cattle,<sup>79</sup> in completion of a commercial transaction across state lines, and also the written documents<sup>80</sup> whereby such transactions are effected.

As to the *instrumentalities*, Chief Justice Waite has said: "The powers granted are not confined to those known or in use when the Constitution was adopted, but they keep pace with the progress of the country and adapt themselves to the new developments of time and circumstances. *They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and steamboat to the railroad and from the railroad to the telegraph, as these new agencies come into use. They were intended for all times and all circumstances.*"<sup>81</sup> Chief Justice Fuller, in the *Sugar*

U. S. 489, 59 Am. R. 267; *Addystone Pipe Co. vs. U. S.*, 175 U. S. 211; *Stockard vs. Morgan*, 185 U. S. 27; *Caldwell vs. North Carolina*, 187 U. S. 622.

<sup>72</sup> Same cases; *McNaughton vs. McGirr*, 20 Mont. 124, 63 Am. St. R. 610; *Buttfield vs. Stranahan*, 192 U. S. 470.

<sup>73</sup> *Pensacola Tel. Co. vs. W. U. Tel. Co.*, 96 U. S. 1, 1 Wilgus, Corp. Cas. 326; *W. U. Tel. Co. vs. Pendleton*, 122 U. S. 347; *Rattan vs. Tel. Co.*, 127 U. S. 411; *Leloup vs. Port of Mobile*, 127 U. S. 640.

<sup>74</sup> *Matter Penn Tel. Co.*, 48 N. J. Eq. 91, 27 Am. St. R. 462; *Muskogee Natl. Tel. Co. vs. Hall*, 118 Fed. R. 382.

<sup>75</sup> *Passenger Cases*, 7 How. 283; *Crandall vs. Nevada*, 6 Wall. 35; *Covington Bridge Co. vs. Kentucky*, 154 U. S. 204, 218.

<sup>76</sup> Same cases; *Hall vs. De Cuir*, 95 U. S. 485; *The Daniel Ball*, 10 Wall. 557; *State Freight Tax Cases*, 15 Wall. 232; *Philadelphia Steamship Co. vs. Penn.*, 122 U. S. 326.

<sup>77</sup> *Crutcher vs. Kentucky*, 141 U. S. 47.

<sup>78</sup> *State vs. Indiana etc. Co.*, 120 Ind. 575.

<sup>79</sup> *Kelley vs. Rhoads*, 188 U. S. 1.

<sup>80</sup> *Almy vs. California*, 24 How. 169; *Fairbanks vs. U. S.*, 181 U. S. 283; *Norfolk & West. Ry. Co. vs. Sims*, 191 U. S. 441; *Pennsylvania R. R. vs. Hughes*, 191 U. S. 477; *Interstate Commerce Com. vs. Baird*, 194 U. S. 25, 24 S. C. Rep. 563.

<sup>81</sup> *Pensacola Tel. Co. vs. W. U. Tel. Co.*, 96 U. S. 1, 9, 12, 1 Wilgus, Corp. Cas. 326.

Trust case, thus summed up the matter: "Contracts to buy, sell or exchange goods to be transported among the several states, the transportation and its instrumentalities, and articles bought, sold or exchanged for the purpose of such transit among the states, or put in the way of transit, may be regulated, but this is because they form part of the interstate trade or commerce." This summary was adopted by Mr. Justice Harlan in his dissenting opinion in the same case, and this has ever since been the accepted and repeated doctrine of the court.<sup>82</sup>

The production or manufacture of things intended for interstate commerce,<sup>83</sup> or gathering them together for the purpose of sending them to other states,<sup>84</sup> or after sending them into another state, keeping them there for the purpose of use or sale,<sup>85</sup> if not in the original package,<sup>86</sup> is not interstate commerce.

Insurance,<sup>87</sup> loaning money,<sup>88</sup> dealing in foreign lands,<sup>89</sup> dealing in bills of exchange,<sup>90</sup> carrying on building and loan associations,<sup>91</sup> mining,<sup>92</sup> or carrying on the business of brokers or commission merchants<sup>93</sup> is not interstate commerce so far as to prevent state regulation or within the present anti-trust act.

Under the power to *regulate*, the question naturally arises as to how far Congress can *prohibit* interstate commerce. It

<sup>82</sup> 156 U. S. 1, 13, 36.

<sup>83</sup> U. S. *vs.* E. C. Knight Co., 156 U. S. 1.

<sup>84</sup> *Coe vs. Errol*, 116 U. S. 517; *Diamond Match Co. vs. Ontonagon*, 188 U. S. 82.

<sup>85</sup> *Brown vs. Houston*, 114 U. S. 622.

<sup>86</sup> *Schollenberger vs. Pennsylvania*, 171 U. S. 1; *May vs. New Orleans*, 178 U. S. 496.

<sup>87</sup> *Hooper vs. California*, 155 U. S. 648.

<sup>88</sup> *Nelms vs. Mortgage Co.*, 92 Ala. 157.

<sup>89</sup> *Honduras Com. Co. vs. State Board*, 54 N. J. L. 278.

<sup>90</sup> *Bamberger vs. Schoolfield*, 160 U. S. 149.

<sup>91</sup> *Southern Building & L. Assn. vs. Norman*, 98 Ky. 294.

<sup>92</sup> *Utley vs. Mining Co.*, 4 Col. 369.

<sup>93</sup> U. S. *vs.* Hopkins, 171 U. S. 578.

has been said that<sup>94</sup> "the power to regulate commerce among the several states is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations," or with the Indian tribes,<sup>95</sup> between which provisions it stands, in the Constitution, and as Chief Justice Marshall says it "must carry the same meaning . . . unless there be some plain intelligible cause which alters it."<sup>96</sup>

As to *foreign* commerce, Alexander Hamilton said Congress may prohibit the *exportation* of commodities.<sup>97</sup> Embargo acts were passed in 1794,<sup>98</sup> 1807<sup>99</sup> and in 1812.<sup>100</sup> President Washington signed the first, President Jefferson signed the second and President Madison the third. The second came before the Federal District Court in 1808, and it was held that Congress might establish an absolute embargo for an indefinite time.<sup>101</sup> Chief Justice Marshall took the same view in 1824,<sup>102</sup> as did Justice White this year.<sup>103</sup>

The rule that applies to exports applies to imports,<sup>104</sup> and under our *protective* tariff laws based on the commerce clause the importation of proper articles of commerce has been prevented from the beginning of the government;<sup>105</sup> and the Supreme Court, by Mr. Justice White, has just said: "As a

<sup>94</sup> *Brown vs. Houston*, 114 U. S. 622, 630; *Pittsburg Coal Co. vs. Bates*, 156 U. S. 577, 587.

<sup>95</sup> *Buttfield vs. Stranahan*, 192 U. S. 470, 493.

<sup>96</sup> *Gibbons vs. Ogden*, 9 Wheat. 1, Thayer's *Cas. Const. Law*, pt. iv, pp. 1799, 1806.

<sup>97</sup> *Argument on Bank of U. S.*, Clarke & Hall's *Hist.*, p. 100.

<sup>98</sup> 1 U. S. St. at L. 372, 400, 401.

<sup>99</sup> 2 U. S. St. at L. 451, 453, 454, 471, 473, 475, 490, 499, 501, 502, 506, 510, 514, 531, 533, 547.

<sup>100</sup> 2 U. S. St. at L. 700, 707, 708, 719, 763; 3 *Ib.* 88, 94, 98, 123.

<sup>101</sup> *U. S. vs. Brigantine "William,"* 2 Hall's *Am. L. J.* 255, Thayer's *Cases Const. Law*, pt. iv, 1786; 2 Kent. *Com.* 432.

<sup>102</sup> *Gibbons vs. Ogden*, 9 Wheat. 1, Thayer's *Cas. Const. L.* 1799, 1805.

<sup>103</sup> *Buttfield vs. Stranahan*, 192 U. S. 470.

<sup>104</sup> *Ib.*

<sup>105</sup> *Lottery Cases*, 188 U. S. 321, 341; 1 Story, *Const.* § 963; 2 *Ib.* § 1080 *et seq.*; *Journals Conf. Cong.*, vol. 1, pp. 28, 175, 176; vol. 2, 189, 1 Bigelow's *Franklin*, 478.

result of the complete power of Congress over foreign commerce, it necessarily follows that no individual has a vested right to trade with foreign nations, which is so broad in character as to limit and restrict the power of Congress to determine what articles of merchandise may be imported into this country."<sup>106</sup> The slave trade has been prohibited since 1808, and could have been before except for the express inhibition of the Constitution.<sup>107</sup> The same rule applies to immigration of persons; they can be excluded.<sup>108</sup>

*As to commerce with the Indians*, the power is absolute and exclusive.<sup>109</sup> Franklin's proposed plan of perpetual union in 1754 gave the grand council power to regulate all the Indian trade.<sup>110</sup> As early as 1786 the Confederation Congress prohibited all trading with the Indians, except under a license to do so,<sup>111</sup> and by an act of the first Congress in 1790 no one was allowed to carry on any trade or intercourse with the Indians without a license.<sup>112</sup> Such has been the policy ever since, and such prohibitions have always been upheld by the courts.<sup>113</sup>

*As to interstate commerce*, it has already been held that Congress may prohibit combinations<sup>114</sup> or contracts<sup>115</sup> in direct restraint thereof or the transportation or introduction of

<sup>106</sup> *Buttfield vs. Stranahan*, 192 U. S. 470.

<sup>107</sup> Chief Justice Marshall in *Gibbons vs. Ogden*, 9 Wheat. 1, Thayer's *Cas. Const. Law*, 1799, 1815.

<sup>108</sup> *Japanese Immigration Cases*, 189 U. S. 86, 1903.

<sup>109</sup> *U. S. vs. 43 Gallons of Whisky*, 93 U. S. 188; *Buttfield vs. Stranahan*, 192 U. S. 470, 493.

<sup>110</sup> *Fisher's Evolution of the Constitution*, p. 293.

<sup>111</sup> Aug. 7, 1786, 11 *Journals of Cong.* 126; July 18, 1787, 12 *Journals Cong.* 66.

<sup>112</sup> July 22, 1790, 1 *St. at L.* 137-8; Mar. 1, 1793, 1 *St. at L.* 329; *U. S. vs. Mayrand*, 154 U. S. 522.

<sup>113</sup> *Ib.*

<sup>114</sup> *U. S. vs. Trans-Mo. Frt. Assn.*, 166 U. S. 290, 1897; *U. S. vs. Joint Traffic Assn.*, 171 U. S. 505, 1898; *Northern Securities Co. vs. U. S.*, 193 U. S. 197, 1904.

<sup>115</sup> *Addystone Pipe Co. vs. U. S.*, 175 U. S. 211, 1899; *Montague vs. Lowry*, 193 U. S. 38, 1904.

diseased live stock into one state from another.<sup>116</sup> Although distilled liquors, oleomargarine and game, when killed, are "lawful articles of commerce,"<sup>117</sup> yet Congress can make them subject to the *prohibitory* laws of the state into which they have been shipped for sale from another state.<sup>118</sup> And finally Congress can prohibit the carriage of lottery tickets into one state from another,<sup>119</sup> or the sending of letters or circulars relating to lotteries through the mails.<sup>120</sup> *State laws* forbidding the introduction of convict made goods<sup>121</sup> or *regulating* interstate passengers,<sup>122</sup> or forbidding the introduction of articles proper for commerce<sup>123</sup> are void because they infringe upon the exclusive power of Congress to regulate commerce.

In addition to the foregoing, Congress has forbidden the transportation of negroes into a state,<sup>124</sup> or of live stock affected with contagious diseases,<sup>125</sup> or the carrying or sending of any literature, picture or article designed for indecent or immoral use,<sup>126</sup> or convict made goods,<sup>127</sup> or the sale of the dead bodies of wild animals or birds killed in violation of the laws of the state where the attempt is made.<sup>128</sup> Congress has also made all railroads post roads,<sup>129</sup> authorized them to connect so as to form continuous interstate lines,<sup>130</sup> authorized telegraph com-

<sup>116</sup> *Reid vs. Colorado*, 187 U. S. 137, 1902, 98 Am. St. R. 69, 29 Col. 333.

<sup>117</sup> *Bowman vs. Chicago etc. Ry. Co.*, 125 U. S. 465; *Leisy vs. Hardin*, 135 U. S. 100.

<sup>118</sup> *In re Rahrer*, 140 U. S. 545; *Vance vs. Vandercook*, 170 U. S. 438, act Aug. 8, 1890, c. 728, 26 St. at L. 313; act May 25, 1900, c. 553, 31 St. at L. 187; act May 9, 1902, c. 784, 32 St. at L. 193.

<sup>119</sup> *Lottery Cases*, 188 U. S. 321, 1903.

<sup>120</sup> *In re Rapier*, 143 U. S. 110.

<sup>121</sup> *People vs. Hawkins*, 157 N. Y. 1.

<sup>122</sup> *Hall vs. De Cuir*, 95 U. S. 485.

<sup>123</sup> *Brimmer vs. Rebman*, 138 U. S. 78.

<sup>124</sup> 2 U. S. St. at L. 205, 1803.

<sup>125</sup> Act May 29, 1884, 23 St. at L. 32.

<sup>126</sup> Act Feb. 8, 1897, 29 St. at L. 512.

<sup>127</sup> Act July 24, 1897, 30 St. at L. 211, § 31.

<sup>128</sup> Act May 25, 1900, 31 St. at L. 187, § 3.

<sup>129</sup> Act of 1838, and 17 St. at L. 308.

<sup>130</sup> Act of 1866, R. S. §5258.

panies to construct their lines along such railroads,<sup>131</sup> regulated the transportation of live stock over interstate railroads,<sup>132</sup> provided for arbitration between interstate railroad companies and their employees<sup>133</sup> and required the use of automatic couplers and appliances upon the cars and trains used in interstate commerce.<sup>134</sup>

In short, from *Gibbons vs. Ogden*, in 1824, to the Securities case, in 1904, in the words of Marshall, "the power to regulate commerce among the several states is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States."<sup>135</sup> The main constitutional limitations are the ordinary and necessary governmental powers reserved to the states that no tax shall be laid on articles exported from any state and that no person shall be deprived of life, liberty or property without due process of law. As to the bearing of these provisions on the commerce clause, it has been held that exports here refer only to foreign commerce,<sup>136</sup> and, further, that neither the exclusive grant of New York to navigate the Hudson by steamboats,<sup>137</sup> nor the exclusive grant of Florida to a telegraph company to build a telegraph line along a post road,<sup>138</sup> nor the charter by Virginia to the Wheeling Bridge Company to bridge the Ohio,<sup>139</sup> nor the personal liberty of Mr. Debs,<sup>140</sup> nor the liberty

<sup>131</sup> Act of 1866, R. S. § 5263.

<sup>132</sup> Act Mar. 3, 1873, R. S. §§ 4386-89.

<sup>133</sup> Act Oct. 1, 1888, 25 St. at L. 501; also June 1, 1898, c. 370, 30 St. at L. 424.

<sup>134</sup> Act Mar. 2, 1893, 27 St. at L. 531.

<sup>135</sup> *Gibbons vs. Ogden*, 9 Wheat. 1, 196, 197; *Northern Securities Co. vs. U. S.*, 193 U. S. 197.

<sup>136</sup> 1 Tucker, Const. of U. S. 660; *Pace vs. Burgess*, 92 U. S. 372; *Turpin vs. Burgess*, 117 U. S. 504; *Woodruff vs. Parham*, 8 Wall. 540; *Cooley vs. Wardens of Philadelphia*, 12 How. 299; *Almy vs. California*, 24 How. 169.

<sup>137</sup> *Gibbons vs. Ogden*, 9 Wheat. 1.

<sup>138</sup> *Pensacola Tel. Co. vs. W. U. Tel. Co.*, 96 U. S. 1; *W. U. Tel. Co. vs. Gottlieb*, 190 U. S. 412.

<sup>139</sup> *Wheeling Bridge Cases*, 9 How. 647; 11 How. 528; 13 How. 518; 18 How. 421, 460.

<sup>140</sup> *In re Debs*, 158 U. S. 564.

to contract of the Addystone Pipe Company or the Joint Traffic Association,<sup>141</sup> nor a New Jersey grant to own and vote shares in a holding company,<sup>142</sup> nor the right to trade with foreign nations<sup>143</sup> is available against the governmental power to regulate commerce, but on the other hand yields to and is limited by that power; or, in the language of Mr. Justice Bradley, "The power of Congress is supreme over the whole subject, unembarrassed by state lines or state laws. In this matter the country is one and the work to be accomplished is national; state interests, state jealousies and state prejudices do not require to be consulted."<sup>144</sup> And, as said by Mr. Justice Brewer in the Debs case, the power goes to the extent of "direct supervision, control and management."<sup>145</sup>

As to the power of the national government to create a corporation, it may seem useless to inquire, since we see national banks all about us. Its history is significant for our purposes. In 1779, in the critical period of the Revolution, Alexander Hamilton suggested that the creation of a bank by the revolutionary Congress was the method of escape from financial disaster.<sup>146</sup> In 1781 the Articles of Confederation, providing that *each state retained every power not expressly delegated to Congress* went into operation. There was no express power to create a bank.<sup>147</sup> Robert Morris was asked to become Superintendent of Finances. Mr. Hamilton urged him to accept and to establish a bank. He accepted, and three days later submitted to the Congress a plan drawn up by Gouverneur Morris for the Bank of North America.<sup>148</sup> Mr. Madison opposed it as being unconstitutional, but an ordinance was passed to

<sup>141</sup> U. S. *vs.* Addystone Pipe Co., 175 U. S. 211, 1899; U. S. *vs.* Joint Traffic Assn., 171 U. S. 505, 1898.

<sup>142</sup> Northern Securities Co. *vs.* U. S., 193 U. S. 197.

<sup>143</sup> Buttfield *vs.* Stranahan, 192 U. S. 470.

<sup>144</sup> Stockton *vs.* R. R. Co., 32 Fed. R. 9, 17.

<sup>145</sup> *In re* Debs, 158 U. S. 564, 578.

<sup>146</sup> 1 Hamilton's Works, 116.

<sup>147</sup> Articles of Confederation, art. ii.

<sup>148</sup> See note, Clarke & Hall's Hist. Bank U. S., p. 14.



incorporate it, because "the exigencies of the United States made it indispensably necessary."<sup>149</sup> Its validity was attacked in Pennsylvania in 1785 and James Wilson defended it, laying down the doctrine of implied powers as follows: "Whenever an object occurs to the direction of which no particular state is competent, the management must of necessity belong to the United States in Congress assembled."<sup>150</sup> The federal convention met in 1787, in order to form a more perfect union. This convention *four times unanimously resolved that the new government should* have all the powers the Confederation had, and many others. The new government went into operation in 1789. In 1790 Mr. Hamilton, Secretary of the Treasury, reported that a national bank was of primary importance for establishing the public credit.<sup>151</sup> An act was passed in 1791 to incorporate the United States Bank upon the plan Hamilton suggested.<sup>152</sup> It was opposed in the House by Mr. Madison.<sup>153</sup> President Washington asked the opinions of his Cabinet, and Mr. Jefferson<sup>154</sup> and Mr. Randolph<sup>155</sup> put in written opinions opposing it. Mr. Hamilton answered them in one of his greatest state papers.<sup>156</sup> He argued: The federal government as to its objects is sovereign. It is the nature of sovereign power to use all appropriate means to attain the end authorized; as an appropriate means to an authorized end the right to erect a corporation is inherent in, and inseparable from, the idea of sovereign power. Washington was convinced and signed the act.<sup>157</sup>

<sup>149</sup> Clarke & Hall's Hist. Bank of U. S., p. 11.

<sup>150</sup> 1 Wilson's Works, Andrew's ed., pp. 558, 561, 562.

<sup>151</sup> Clarke & Hall's Hist. Bank U. S., 15.

<sup>152</sup> 1 St. at L. 191.

<sup>153</sup> Clarke & Hall, p. 39; 6 Bancroft's Hist. U. S. (Cent. ed.) 463.

<sup>154</sup> Clarke & Hall, 91; Ford's Federalist, appendix.

<sup>155</sup> Clarke & Hall, pp. 86, 89.

<sup>156</sup> *Ib.* p. 95; Ford's Federalist, appendix.

<sup>157</sup> In the constitutional convention Mr. Pinckney once moved that the new government be given power "to charter corporations" (Madison Papers, p. 440, Aug. 18), and Mr. Madison twice moved that Congress be given power "To grant charters of corporations in cases where the public good may require them, and the authority of a single state may be incom-

Its validity was recognized afterwards by the courts<sup>158</sup> and by Presidents Adams and Jefferson, both of whom signed acts relating to it.<sup>159</sup> Its charter expired in 1811. A bill to renew was lost in the House by one vote and in the Senate by the casting vote of the Vice President on constitutional

petent" (*Ib.* p. 439; Sept. 14, p. 543). These were both rejected, and it often is urged that this shows the intention of the convention to deny to Congress the power to grant charters of incorporation. The course of events, however, shows that such was not the intention. The provision was rejected because unnecessary (Mr. King, *Mad. P.* 544), might lead to monopolies (Mr. King, Mr. Wilson and Mr. Gerry, *Ib.* pp. 544, 553), and as the question was finally put, was limited to canals (*Ib.* 544). Mr. Wilson thought such a provision was necessary to prevent a state from obstructing the general welfare, and observed that mercantile monopolies are already included in the power to regulate trade (*Ib.* p. 544). It is necessary to recall, in order to arrive at a fair understanding of the views of many of the leading men, their connection with the old Bank of North America and the first U. S. Bank. The Bank of North America had been established under the Confederation, at the suggestion of Hamilton, by Robert Morris, and its charter was drawn up by Gouverneur Morris. It had been opposed by Madison, and its charter defended in court by James Wilson. When the government went into operation under the Constitution, Hamilton, acting largely on the advice of Robert Morris, became Secretary of the Treasury, and as such urged the creation of the First U. S. Bank, the bill for which, opposed by Madison in Congress, was signed by Washington, after fully considering the objections thereto of Randolph, Attorney General, and Jefferson, Secretary of State, and the argument in favor thereof by Mr. Hamilton. All of these men, except Mr. Jefferson, had been active and influential members of the constitutional convention, and Washington had been its president. In their arguments against the bank neither Madison, Randolph nor Jefferson relied on the fact that the convention had refused to grant Congress power to create a corporation; and on the other hand Mr. Hamilton was able to rely upon the strong inference that at least four of the state conventions understood that such power resided in Congress, for they suggested amendments to limit the power so Congress could not create monopolies (see note 171 *infra*). All these men understood the new government was to have more extensive powers than the confederation and all knew that the confederation had chartered the Bank of North America.

<sup>158</sup> *Bank of U. S. vs. Deveaux*, 6 Cr. 61, 1807.

<sup>159</sup> Acts June 27, 1798, Mar. 23, 1804, Feb. 24, 1807, providing penalty for counterfeiting the bank's securities and for authorizing the establishment of branches in Louisiana.

grounds.<sup>160</sup> Three years later Mr. Dallas, Secretary of the Treasury, was asked to report a plan "to revive the public credit." He reported that a national bank was necessary. An act was passed in 1816, by large majorities; the constitutional objections were scarcely mentioned in the debates.<sup>161</sup> Mr. Madison signed the bill, saying that the constitutional question was settled by repeated recognitions by all branches of the government.<sup>162</sup> In the meantime many state banks had been formed. These and the states were hostile. Indiana and Illinois forbade the United States Bank to locate within their borders. Maryland proposed to tax the branches \$15,000, Ohio \$50,000 annually and other states larger sums yet.<sup>163</sup> The Maryland tax came before the Supreme Court in 1819, in *McCulloch vs. Maryland*,<sup>164</sup> and was held void by Chief Justice Marshall, who declared Congress has power to incorporate a bank and it has a right to establish a branch within any state. He said: "The government is one of enumerated powers, though limited in powers it is supreme within its sphere of action; *a government with a right and duty to do an act must be allowed to select the means.* The power to create a corporation is not a substantive power which cannot be implied. It is never the end, but the means by which other objects are accomplished." And he laid down the rule followed ever since:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." The Ohio tax case, *Osborn vs. U. S. Bank*,<sup>165</sup>

<sup>160</sup> Clarke & Hall's Hist., pp. 274, 446. The debates here were confined almost exclusively to the constitutional question, and are given in Clarke & Hall.

<sup>161</sup> Clarke & Hall, pp. 481, 487, 539, 549, 579, 585, 594, 596, 605, 609, 611, 612, 613, 619, 621, 681, 706, 713.

<sup>162</sup> *Ib.* 594.

<sup>163</sup> Catterall, *The Second Bank of U. S.*, pp. 62-64; 4 McMaster's Hist. People of U. S., 484-511.

<sup>164</sup> 4 Wheat. 316.

<sup>165</sup> 9 Wheat. 738.

came before the court in 1824. The constitutional question was reargued. Justice Marshall in affirming his former decision held "the bank was an instrument necessary and proper for carrying on the fiscal operations of the government," *though it did a private banking business also*. The same doctrine has been applied to our present national banking system.<sup>166</sup>

The constitutionality of the banks is beyond question. How about a corporation to engage in commerce?

When the Constitution was formed, a "large part of the commerce of the world was carried on by corporations."<sup>167</sup> The Hamburg Company of "*Merchant Adventurers*," dating back to 1248 and 1505, the Russian Company, chartered in 1566, the East India Company in 1600, the Hudson Bay Company in 1670, were all *trading* companies and were then or had been celebrated for their efficiency and the extent of their trading operations throughout the commercial world. In fact, our colonial charters were formed on the model of these trading company charters.<sup>168</sup> The literal meaning of *commerce* is an interchange of merchandise, or *trading*. Mr. Jefferson, in his argument against the bank, understood the commerce power authorized Congress "to prescribe regulations for *buying* and *selling*."<sup>169</sup> In *Gibbons vs. Ogden* Chief Justice Marshall said: "Commerce undoubtedly is *traffic*, but it is something more; it is *intercourse*," and includes navigation.<sup>170</sup> Mr. Hamilton, in his argument for the bank, said Congress may create a corporation "in relation to *the trade* with foreign countries, or to *the trade* between the states, or with the Indian tribes, because it is the province of the federal government to *regulate* those objects and because it is incident to a general

<sup>166</sup> *Easton vs. Iowa*, 189 U. S. 220, 1903; *Farmers Nat'l Bank vs. Dearing*, 91 U. S. 29.

<sup>167</sup> Field, J., in *Paul vs. Virginia*, 8 Wall. 168, 1868; also quoted with approval by Justice Bradley in *Stockton vs. R. R. Co.*, 32 Fed. R. 9, 14.

<sup>168</sup> *Angell & Ames Corp.*, §§ 52, 53; *Fisher's Evolution of the Const. of the U. S.*, pp. 26, 29, *et seq.*, 118-123.

<sup>169</sup> *Ford's Federalist*, p. 652.

<sup>170</sup> *Gibbons vs. Ogden*, 9 Wheat. 1, 1824.

*sovereign or legislative power to regulate a thing to employ all the means which relate to its regulation to the best and greatest advantage. . . . They possess a general authority to regulate trade with foreign countries. This is a means which has been practiced to that end by all the principal commercial nations, who have trading companies to this day which have subsisted for centuries. . . . The state conventions proposed constitutional amendments expressed nearly thus: Congress shall not grant monopolies, nor erect any company with exclusive advantages of commerce.*<sup>171</sup> Thus at the same time expressing their sense that the power to erect *trading companies* or corporations was inherent in Congress and objecting to it no further than as to the grant of exclusive privileges."<sup>172</sup>

This is the doctrine for which I contend in regard to *trading companies* and was said by this far-sighted statesman before the era of turnpikes, canals, railroads or telegraphs and is a contemporary exposition of the meaning of the Constitution.

There is authority, however, as to the government's direct power over the means of interstate communication. The act of 1802 for the admission of Ohio to the union provided that five per cent. of the net proceeds of the sales of the public lands in the state should be applied by the federal government to "laying out and making" public roads from the navigable waters of the Atlantic "to the Ohio River, to the said state and through the same." The same agreement was made with Indiana, Illinois and Missouri when they were admitted, and the acts were signed by Presidents Jefferson, Madison and

<sup>171</sup> Massachusetts proposed as an amendment "that Congress erect no company with exclusive advantages of commerce." New Hampshire and North Carolina proposed "that Congress shall erect no *company of merchants* with exclusive advantages of commerce." New York: "That the Congress do not grant monopolies or erect any company with exclusive advantages of commerce." The other states did not mention the subject. The necessary inference from the foregoing is that Congress had the power to create *mercantile* or *trading companies*. Ford's Federalist, pp. 632, 634, 643, 650, 676.

<sup>172</sup> Clarke & Hall's Hist. Bank U. S., pp. 97, 110, 111; Ford's Federalist, pp. 657, 676.

Monroe. In 1806 President Jefferson signed the act for the construction by the national government of the Cumberland road from the Potomac to the Ohio River and which by subsequent acts was extended to Jefferson City, Missouri. The consent of the states through which it passed was to be obtained before work began.<sup>173</sup> In 1822 an act authorizing the erection of toll gates, the collection of tolls and providing penalties without the state's consent was vetoed by President Monroe on the constitutional view that to *establish* post roads meant simply to *designate* them and that the national government had no right to acquire property or exercise any jurisdiction within a state without its consent,<sup>174</sup> all of which were overruled the first time they came before the courts.<sup>175</sup> The same ideas continued

<sup>173</sup> For short history of the national road legislation, see *Indiana vs. U. S.*, 148 U. S. 148.

<sup>174</sup> Richardson, *Messages and Papers of the Presidents*, vol. 2, p. 142. See also vol. 1, p. 418 (Jefferson); *ib.* 584 (Madison's veto); vol. 2, 483, 493, 638 (Jackson); vol. 3, 118 (Jackson's veto); vol. 4, 330 (Tyler's veto); *ib.* 460 (Polk's veto); vol. 5, p. 256 (Pierce); vol. 7, 382 (Grant); vol. 8, 120 (Arthur); vol. 9 (Cleveland's vetoes).

<sup>175</sup> In *Dickey vs. Maysville Turnpike Co.*, 7 Dana (Ky.) 113, 125, 128, 1838, the first objection of President Monroe was thus vigorously answered by Chief Justice Robertson: "We might present almost endless illustrations of the fact that the *popular* and *philological*, *sacred* and *profane*, *oracular* and *political*, import of 'establish' is not to designate, but to found, prepare, make, institute and confirm," and he held that the general government had power to make, repair, keep open and improve post roads whenever the exercise of any such independent national power shall be deemed proper for the satisfactory performance of its duties as to the mails.

In *Kohl vs. U. S.*, 91 U. S. 367, 1875, it was held that the eminent domain power of the national government enabled it to secure property necessary for a post office within a state without its consent. The same had been held in 1871 by Judge Cooley in *Trombley vs. Humphrey*, 23 Mich. 471.

And in *Stockton vs. R. R. Co.*, 32 Fed. R. 9, 15, 18, 1887, Mr. Monroe's third objection was thus answered by Mr. Justice Bradley: "The Constitution gives Congress power to exercise exclusive jurisdiction over all places purchased by consent of the legislature of the state. This does not touch the question as to the power of the United States to acquire the mere use of land without exclusive jurisdiction therein. Nearly all the powers of government are exercised over territory in which the United States

during the Pacific Railroad agitation, yet the first charter granted by the United States, in 1862,<sup>176</sup> authorized a *Kansas* corporation to build a part of the Union Pacific road in the State of Missouri and authorized a California corporation to build a line from San Francisco, instead of Sacramento, as its state charter provided, to the east state line and on to Ogden, Utah. Also these companies were both, without state consent, authorized to consolidate with the national corporation.<sup>177</sup> This they did in 1880. The attorney general of Kansas attacked the validity of the consolidation, and the Supreme Court of the United States said "if the acts of Congress confer authority, the consolidation is valid; if not, it is invalid."<sup>178</sup> Later California undertook to tax both the state and federal franchises. This was held void, Mr. Justice Bradley saying:<sup>179</sup> "The power to construct or to authorize individuals or corporations to construct national highways and bridges from state to state is essential to the complete control and regulation of interstate commerce." Otherwise "it would be without authority to regulate one of the most important adjuncts of commerce." In 1871 the Texas and Pacific Railroad Company was incorporated by the federal government to construct and operate a railroad from Marshall, Texas, to San Diego, California, and nothing was said as to the state's consent.<sup>180</sup> In 1886 Congress authorized a New York railroad corporation and the several states have concurrent jurisdiction. Consent and cession are necessary to extinguish state jurisdiction and confer it exclusively on Congress, but not necessary to the use of the land by the United States." The same had been held by Judge Cooley in *Trombley vs. Humphrey*, *supra*.

<sup>176</sup> Act July 1, 1862, 12 U. S. St. at L., c. 120, p. 489, §§ 9, 10, 12, 14, 15, 16, relating to Leavenworth, Pawnee & W. R. R. of Kansas, and Central Pac. R. R. of California, and Hannibal and St. J. R. R. of Missouri.

<sup>177</sup> *Ib.*

<sup>178</sup> *Ames vs. Kan.*, 111 U. S. 449, 462; *Pacific R. R. Removal Cases*, 115 U. S. 1.

<sup>179</sup> *California vs. Pacific R. R.*, 127 U. S. 1; same quoted with approval by Mr. Justice Gray in *Luxton vs. North River Bridge Co.*, 153 U. S. 525, 1894.

<sup>180</sup> Act Mar. 3, 1871, 16 St. at L. 573, c. 122, §§ 4, 9, 10, 22, 23.

to build a bridge over navigable water between New York and New Jersey as a part of an interstate railroad line. The New Jersey law expressly forbade it, and the attorney general sought to enjoin, but Justice Bradley said: "In the pursuit of a business authorized by the government of the United States the corporations of other states cannot be prohibited or obstructed by any state."<sup>181</sup>

The North River Bridge case went a step further in 1894.<sup>182</sup> The bridge company was chartered by Congress alone to bridge the Hudson from New York to Hoboken. It brought suit to condemn the necessary land in New Jersey without that state's consent. It was resisted on the ground that Congress had neither the power to create the corporation nor authorize the condemnation of the land. Overruling both, Mr. Justice Gray says: "Congress may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a *railroad corporation for the purpose of promoting commerce among the states.*"

In the exercise of this power of *promoting* commerce, interstate and foreign, Congress has authorized the incorporation of the present national banks,<sup>183</sup> the Union Pacific,<sup>184</sup> Northern Pacific,<sup>185</sup> Atlantic and Pacific<sup>186</sup> and the Texas and Pacific<sup>187</sup> Railways; the Maritime Canal Company of Nicaragua,<sup>188</sup> various bridge companies,<sup>189</sup> the construction of the national road,<sup>190</sup> and the Panama Canal,<sup>191</sup> subscriptions by the govern-

<sup>181</sup> *Stockton vs. B. etc. R. R. Co.*, 32 Fed. R. 9, 14.

<sup>182</sup> *Luxton vs. North River Bridge Co.*, 153 U. S. 525.

<sup>183</sup> 12 St. at L. 665, 1862.

<sup>184</sup> *Ib.* 489.

<sup>185</sup> 13 St. at L. 365, 1864.

<sup>186</sup> 14 St. at L. 292, 1866.

<sup>187</sup> 17 St. at L. 59, 1872.

<sup>188</sup> 25 St. at L. 673, 1889.

<sup>189</sup> July 11, 1890, 26 St. at L. 268, 153 U. S. 525.

<sup>190</sup> 148 U. S. 148.

<sup>191</sup> *Treaties*, Nov. 18, Dec. 16, 1901; Jan. 22, 1903; Nov. 18, 1903; Feb. 23, 1904.



ment to shares in various canal companies,<sup>192</sup> and now, by authority of Congress the United States owns, and intends to vote, sixty-nine seventieths of the stock of the Panama Railway Company.<sup>193</sup> Under the postal power, the "first telegraph line ever built was constructed between Washington and Baltimore, and the entire cost of its construction and operation for nearly two years was paid by Congress."<sup>194</sup> State incorporated telegraph companies have been authorized to construct their lines on all post roads, even where a state had granted to another company the exclusive right to construct such line,<sup>195</sup> and all railroads are made post roads for this purpose.<sup>196</sup>

But Congress has exercised its power to create corporations not only to promote or facilitate commerce by creating or authorizing corporations to *engage* in interstate or foreign commerce, but also has created the Interstate Commerce Commission, which the Supreme Court has held to be a *corporation*, not for the purpose of *engaging in* or carrying on interstate or foreign commerce, but for the sole purpose of *regulating* such commerce.<sup>197</sup>

The authority of Congress to create corporations in the District of Columbia and in the territories has never been doubted, and is as extensive as the power of the legislature of any state to create corporations within the state.

Chapter 15 of the Compiled Statutes of the District provides for the formation of educational, religious, manufacturing, agricultural, mechanical, insurance, transportation, cemetery and trust corporations in the District. On March 13, 1901, Congress enacted a Code of Law for the District, to go into effect January 1, 1902. Section 605 of this provides for the

<sup>192</sup> Acts Feb. 20, 1811; Mar. 3, 1825; May 13 and 18, 1826; May 4 and 24, 1828; 2 St. 643, 4 St. 124, 162, 169, 294, 305.

<sup>193</sup> Detroit Free Press, Aug. 20, 1904.

<sup>194</sup> Report Committee on Judiciary, Feb. 4, 1875, Series No. 1657, Doc. No. 125, 5 St. at L. 618.

<sup>195</sup> July 24, 1866, 14 St. at L. 221, Rev. St. § 5263.

<sup>196</sup> Act July 7, 1838; also 17 St. 308, § 201; R. S., § 3964.

<sup>197</sup> Texas & Pacific R. R. vs. Interstate Commerce Com., 162 U. S. 197, Shiras, J.

formation, by three incorporators, of corporations to carry on any business that may be legally conducted by an individual in the District without any franchise or annual tax, except upon its tangible property in the District, and with very little provision for supervision or control. According to Professor F. L. Siddons, of the Law School of the National University, this law has been falsely exploited as a national incorporation law and companies have been formed for the purpose of promoting incorporation under it as such. During the first eighteen months of its existence 1427 companies, with \$2,903,415,900 authorized capital stock, were organized for the express purpose, in most cases, of doing business *outside* of the District.<sup>198</sup>

Congress has also authorized the incorporation "in the District of Columbia" of national trades unions, with power to establish branches in the states; insurance companies to do business in the states with their consent; the Freedman's Trust Company, with authority to act within the states; the General Education Board "for the promotion of education within the United States," with power to build and equip libraries, workshops, gardens, establish schools and employ teachers, and to take and hold lands for such purposes anywhere; the Centennial Board of Finance; the American Historical Association; the Association of Military Surgeons; the National Asylum for Disabled Volunteers; the Florence Crittenden Mission, and many other like institutions. Scarcely a session of Congress is held in which some such corporation is not created "in the District," to operate anywhere it may choose, so long as the state in which it operates does not forbid.<sup>199</sup>

<sup>198</sup> Annual address of Mr. Siddons as president of Commercial Law League of America, July 26, 1904; Bulletin of League, Aug., 1904; Am. Legal News, Sept., 1904.

<sup>199</sup> 1 Wilgus, Corp. Cas. 324; R. S. § 546, 1 Supp. R. S. 425; 13 St. at L., 510; 15 St. at L. 184; 17 St. at L. 203; 24 St. at L. 86; 1 Supp. R. S. 498; 57th Cong., Jan. 12, 1903, p. 768; Jan. 30, 1903, 784; Feb. 11, 1903, 824.

Congress has always exercised its power to create corporations in the territories or has authorized the territorial government, where there is an organized government, to do so. The recent acquisition of territory has led to much late legislation of this kind. The Philippine Commission is authorized to grant corporate charters; the act of Congress of March 2, 1903, amending the Civil Code of Alaska, added Chapter 37 to Title 3 and provides for the formation of private corporations; the Porto Rico and Oklahoma legislative assemblies have enacted corporation laws under the authority of Congress.<sup>200</sup> It is said that Professor Morse tried, tested and improved his invention of the telegraph at Arroyo, in Porto Rico, before giving it to the world, and now the whole telegraph system of the island is operated by the insular government, and has been since 1901.<sup>201</sup> The foregoing power to create corporations in the territories or to authorize the territorial legislatures to do so is not denied. Such corporations, when states are formed out of the territories, become, without further action, corporations of the state so formed, with the standing of state-created corporations.<sup>202</sup>

Mr. Hamilton considered that the creation of territorial governments was the erection of *corporations* by the federal government. He says: "Such a power (the power to create corporations) has actually been exercised in two very eminent instances, namely, in the erection of two governments, one northwest of the river Ohio, and the other southwest, the last independent of antecedent compact."<sup>203</sup> It has been pertinently suggested that if the federal government can erect *government corporations*, with power to create corporations

<sup>200</sup> Civil Code, Porto Rico, ch. iv, bk. 1, 1902; Oklahoma Statutes, 1893; Session Laws, 1903, ch. ix, p. 136.

<sup>201</sup> Report of the Commr. of Interior, Porto Rico, to Secy. Interior, 1903, p. 11.

<sup>202</sup> *Riddick vs. Amelin*, 1 Mo. 5, Wilgus, Cas. Corp. 302; *Bank of Vincennes vs. State*, 1 Black (Ind.) 251; *Kan. Pac. Ry. Co. vs. A., T. & S. F. Ry. Co.*, 112 U. S. 414.

<sup>203</sup> Ford's Federalist, p. 668.

*generally*, it has the power to do the same itself; otherwise the creature is greater than the creator. Such doctrine, however, is not necessary for the plan herein advocated.

Such district or territorial corporations undoubtedly may be empowered by state comity to act outside of the district or territory in which they are created, but probably cannot, though authorized by their charter to do so, act in another state or territory without the consent, express or implied, of such state or territory unless engaged in the performance of some national function.<sup>204</sup>

From the foregoing it seems certain that the power of the national government is ample to enable it to create whatever *trading, transmission or transportation* corporations to engage in or to regulate interstate or foreign commerce, it may deem wise to establish. But is this sufficient? The combinations of which complaint is made are not only engaged in the foregoing, but in *growing, mining or making* things, and none of these is commerce. Can the national government incorporate companies to do these things within the states? Probably not, if the manufacturing is not strictly for a governmental purpose, or if the manufacturing, mining, etc., is the primary or sole purpose for which the corporation is created and the state in which it seeks to carry on its transactions objects. To do this without such consent probably would require a constitutional amendment, which would be difficult to obtain, and in the writer's opinion would be an unwise extension of the federal power. The writer believes each state would, and ought to, resent the exercise of any power authorizing any federal or state corporation, to establish a private *manufacturing* institution within its borders *without its consent*. But no such power or authority is needed. If the government *can obtain control over the corporations* that do the *growing, mining or making* of things, it will have ample power to solve our difficulties. How can this be done?

<sup>204</sup> Hadley vs. Freedman's Trust Co., 2 Tenn. Ch. 122; Williams vs. Cresswell, 51 Miss. 817.

As things now are, the manufacturing companies do the trading, interstate and foreign. The federal government has control of the *trading*, but neither the manufacturing nor the company that does it. If the process can be reversed, so that the *trading company* incorporated by the national government will do the manufacturing, mining, etc., then both the *trading* and the *company* doing it can be *directly controlled* and the manufacturing, mining, etc., incidentally only, but sufficiently for the proper regulation of interstate and foreign commerce. There is no need of the federal government directly controlling the *manufacturing* and *mining*, if it can control or regulate its corporations so far as they engage in such operations.

The question then is, can a national transmission, transportation or *trading* corporation be authorized or permitted by the federal government to engage in growing, mining or making things, or, in short, be authorized to engage in manufacturing in the states if they do not object? I think so: (1) Because making or producing things is necessary to each of the other operations. (2) Such has been the practice already. All the Pacific railroads carry *intra* as well as *inter* state freight. In *Osborn vs. U. S. Bank* it was expressly held, after elaborate argument, that the federal government had not exceeded its power in authorizing the bank and its branches to do a private loan and discount business within the states where located, and such branches could be located in any state without its consent.<sup>205</sup> National banks now do a private loan and discount business in the states where located as well as issue notes. Some of the Pacific railroads are permitted to *mine* coal for their supply; the Maritime Canal Company incorporated by the federal government is authorized to construct and operate a canal in a place where the United States has no jurisdiction. (3) If *the states* can give corporate capacity to do such things away from home, which by comity is sufficient for the company, there seems to be no reason to think the federal government cannot give a federal corporation

<sup>205</sup> *Osborn vs. Bank of U. S.*, 9 Wheat. 738.

the same capacity, which will also be effective through the comity of the state where exercised. (4) A federal corporation may be created by Congress in a territory or in the District of Columbia to carry on *manufacturing* there; if its charter does not *forbid*, it may by comity engage in such manufacture in any state the same as a state-created corporation; if the national government also authorized it to engage in interstate *trade* or *transportation*, this would not limit its power by comity to carry on its *manufacture* wherever it was not forbidden. (5) The power to engage in trade implies the power to secure something to trade; the national government could authorize a trading company to acquire these things by purchase in any state; if such corporations could buy the things in which it deals, there is no good reason why it may not make them if the state where it does this does not object. So I believe the national government can create a *trading* company which the nation, by the charter, can authorize and the states by comity will allow to do manufacturing in any state. There seems to be no direct authority on the matter. Such intra state business probably is and would be subject to state laws.<sup>206</sup>

The distinction between making things, manufacturing, and commerce has long been recognized and is fundamental. It was clearly drawn by Mr. Jefferson in his argument against the bank when he said: "To make a thing which may be bought and sold is not to prescribe regulations for buying and selling."<sup>207</sup> As Mr. Justice Lamar said in *Kidd vs. Pearson*:<sup>208</sup> "If it be held that the term [regulation of commerce] includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be

<sup>206</sup> *Smythe vs. Ames*, 169 U. S. 466, 519-22; *Reagan vs. Mercantile and Trust Co.*, 154 U. S. 413; *California vs. Pacific R. Co.*, 127 U. S. 1; *Central Pacific R. R. Co. vs. California*, 162 U. S. 91.

<sup>207</sup> Ford's *Federalist*, p. 652.

<sup>208</sup> 128 U. S. 1, 20, 24, 32 L. ed. 346, 351.

that Congress would be invested, to the exclusion of the states, with the power to regulate not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. . . . A situation more paralyzing to the state governments . . . and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine.” This is quoted by Chief Justice Fuller with approval in the Sugar Trust case, *U. S. vs. E. C. Knight Co.*,<sup>209</sup> and to some these doctrines seem to be in irreconcilable conflict with the views above set forth. I do not think so, but believe, on the contrary, that these cases sustain indirectly the plan proposed herein.

The Pearson case held that a state could prohibit the *manufacture* of intoxicating liquors within its borders, although the manufacturer intended to *export* the product. This doctrine had already been applied to the manufacture of oleomargarine.<sup>210</sup> Such prohibition does not *directly* interfere with interstate or foreign commerce.

The Knight case was the first case that came before the Supreme Court involving the application of the federal anti-trust law. It was a suit brought to cancel certain written contracts whereby the American Sugar Refining Company by a purchase of the shares of stock in four Philadelphia refineries secured a practical monopoly of the sugar refining business throughout the United States. The court below held that the proofs failed to make out a “contract, combination or conspiracy” contrary to the act. The Supreme Court, waiving the question whether the proofs established a combination, said, by Chief Justice Fuller: “Conceding the existence of a monopoly in *manufacture* is established by the evidence, can that monopoly be directly suppressed . . . in the mode attempted by this bill?” *Held*, it could not,<sup>211</sup> the court say-

<sup>209</sup> 156 U. S. 1, 14, 15, 39 L. ed. 325, 330.

<sup>210</sup> *Powell vs. Penn.*, 127 U. S. 678, 1257; *Capital City Dairy Co. vs. Ohio*, 183 U. S. 238.

<sup>211</sup> *U. S. vs. E. C. Knight Co.*, 156 U. S. 1. This case seems to have been misunderstood, and many have considered it as holding that the fed-

ing: "That which *belongs to commerce* is within the jurisdiction of the United States, but that which does not belong to commerce is within the police power of the state. . . . The power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense, and although the exercise of that power may result in bringing the operation of commerce into play, *it does not control it and affects it only incidentally and indirectly. Commerce succeeds to manufacture and is not a part of it.* The power to regulate commerce is the power

eral anti-trust act in no way reached the manufacturing monopolies that carry on commerce throughout the United States, and, further, that the federal government had exhausted its power over the subject by the provisions of the act. The case determined neither of these questions, as shown by the facts upon which the case was decided: "By the purchase of the stock of four Philadelphia refineries, with the shares of its own stock, the American Sugar Refining Co. acquired nearly complete control of the manufacture of refined sugar within the United States. The bill charged that the contracts under which these purchases were made constituted combinations in restraint of trade, and that in entering into them the defendants combined and conspired to restrain the trade and commerce in refined sugar among the several states;" canceling the agreements, redelivery of the stock, enjoining further performance of the agreements and further violations of the act, and general relief were asked by the Attorney General. Evidence was taken, and the decision was based upon the record made, consisting mainly of the written contracts relating to the purchase. The trial court found that the shareholders of the four companies had sold their shares to the American Sugar Refining Co. in exchange for its shares, that there was "no understanding or concert of action between the stockholders of the [four] companies respecting the sales, but that those of each company acted independently of those of the others and in ignorance of what was being done by such others;" that the contract of sale in each case contained no provision respecting trade or commerce in sugar;" "that the object in purchasing the four refineries was to obtain a greater influence or more perfect control over the business of refining and selling sugar in this country." This court held "the facts did not show a contract, combination or conspiracy to restrain or monopolize trade or commerce among the several states"—i. e., the proof failed to show a combination to monopolize, etc.

Chief Justice Fuller, in pronouncing the opinion affirming the decision of the lower court, says: "In the view we take of the case we need not discuss whether because the tentacles which drew the outlying refineries



to prescribe the rule by which commerce shall be governed and is a power independent of the power to suppress monopoly ; but it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce."

How are these doctrines in connection with the settled rules of corporation law to be applied to the matter in hand? Every corporation as such is subject to the control of the government creating it.<sup>212</sup> The business it does is subject to the control of the government having jurisdiction over the business done. Each state has exclusive jurisdiction over the *manufacturing* done within its borders, by whomsoever done. The federal into the dominant corporation were separately put out, therefore there was no combination to monopolize." "The conclusion *on this record* is that the result of the transaction complained of was the creation of a monopoly in the *manufacture* of a necessary of life;" "the contracts and acts of the defendants related *exclusively to the acquisition* of the refineries and business of *sugar refining* and bore no direct relation to commerce between the states. The object was manifestly private gain in the manufacture of the commodity, *but not through control of interstate or foreign commerce*;" "there was nothing in the proofs to indicate any intention to put *restraint upon trade or commerce*." So, conceding the existence of a monopoly in *manufacture* is established by the evidence, can that monopoly be directly suppressed under the act of Congress "*in the mode attempted by this bill*"? *Held*, it could not. The case is justly subject to the vigorous criticism made by Mr. Justice Harlan in his dissenting opinion. There was no allegation in the bill that the American Sugar Refining Co. "monopolizes or attempts to monopolize *interstate commerce*," contrary to sec. 2 of the act, and the proofs put in failed to establish a combination or conspiracy contrary to sec. 1, and also failed to show that interstate commerce was directly affected. Had there been proper allegations and proofs, as there undoubtedly might have been, the decision probably would have been different. Subsequent decisions have kept it rigidly within *the record* then before the court, as, for instance, Mr. Justice Peckham, in pronouncing the unanimous opinion of the court in the Addystone pipe case (175 U. S. 211, p. 240), says: "The direct purpose in the Knight case was the control of the manufacture of sugar. There was no combination or agreement in terms regarding the future disposition of the manufactured article, nothing looking to a transaction in the nature of interstate commerce." See also *Montague vs. Lowry*, 193 U. S. 38; the Northern Securities Case, 193 U. S. 197.

<sup>212</sup> *State vs. Curtis*, 35 Conn. 374, 95 Am. D. 263, Wilgus, Corp. Cas. 258.

government has exclusive jurisdiction over *interstate commerce* by whomsoever done. Any state can create a *manufacturing* corporation and prescribe the terms and conditions upon which it will allow it to engage in interstate commerce; it may allow or forbid it to engage in such commerce. This is not because the state has any jurisdiction over interstate commerce, but because it has complete authority over its own corporation; neither permitting nor forbidding such corporation to engage in interstate commerce, is *regulating* such commerce by the state; but if it permits its corporation to engage in interstate commerce, the permission cannot be inconsistent with the paramount authority of the federal government to prescribe the terms upon which it may carry on interstate commerce.

Upon the other hand, the federal government may create a corporation to engage in *interstate commerce* and may prescribe the terms and conditions upon which it will permit such corporation to engage in *manufacturing*. It may either permit or forbid it doing so, not because the federal government has any jurisdiction over manufacturing, but because it has jurisdiction over its own corporation as such; neither allowing nor forbidding such corporation to engage in manufacturing is to regulate manufacturing in the state. The manufacturing, if allowed, is still subject to the paramount control of the state where it is done. The control of the *manufacturing* corporation that engages in *interstate commerce*, by the state creating it, is not controlling such commerce directly, but only incidentally. So also the control of the *trading* corporation that engages in manufacturing, by the federal government that creates it, is not controlling manufacturing directly, but only incidentally. The former does not violate the federal power and the latter does not infringe state authority.

Another step, perhaps, is necessary as a last resort in order to insure effective governmental control, and that is the power to *prohibit* state corporations from engaging in interstate commerce in order to require them to organize as federal corporations. The power of prohibition under the commerce clause has been con-

sidered. Probably the power to tax can be used to the same end. This power has constantly been used for the purpose of regulating foreign commerce in order to *protect* home manufactures and to prevent the introduction of foreign goods except upon the terms named in the tariff laws. Such laws, where goods are excluded directly or by a prohibitory tariff, are not revenue laws, but are taxes laid "in order to promote the general welfare." From the earliest times tariff laws have been as much, if not more, for regulating commerce than for raising revenue. When laid for this purpose, their validity is no longer questioned. The taxing power was so used to destroy the issue of notes by the state banks and was held to be constitutional. The true bearings of this decision were pointed out at the time in the dissent of Justice Nelson, who said: "The present decision strikes only at the power to create banks, but no person can fail to see that the principle involved affects the power to create any other description of corporation such as railroads, turnpikes, manufacturing companies and others."<sup>213</sup> The same device has been used to *protect* the farmers by a tax upon oleomargarine. The object of the law is not revenue, but the destruction of or making unprofitable the oleomargarine industry, *and it has just been pronounced constitutional.*<sup>214</sup>

The government undoubtedly could also classify corporations that engage in interstate commerce and require such as were deemed dangerous because of size, powers or method of organization to incorporate under federal laws, leaving others or individuals engaged in interstate commerce to do as they choose.<sup>215</sup>

If what has been said is correct, then it is believed that the federal government has ample power to deal in an effective,

<sup>213</sup> *Veazie Bank vs. Fenno*, 8 Wall. 533; *Casey vs. Galli*, 94 U. S. 673; *National Bank vs. U. S.*, 101 U. S. 1.

<sup>214</sup> Act May 9, 1902, c. 784, 32 St. at L. 193, Supp. U. S. Comp. St. 1901, p. 265; *McCray vs. U. S. Adv. Sh.*, July 15, 1904, p. 769.

<sup>215</sup> *Farmers' & M. Ins. Co. vs. Dabney*, 189 U. S. 301, 23 Sup. Ct. R. 565, 97 Am. St. R. 624, 631.

comprehensive, yet simple and direct, way with the difficulties and dangers besetting us, and in a way flexible enough to meet the growing demands of business, and at the same time in a way that does not infringe upon the proper power of the states nor require any constitutional amendment that undertakes to redistribute federal and state powers in an unknown and uncertain way.<sup>216</sup>

#### IV. POLICY.

In discussing this there is no better order than to keep close to Marshall's great rule, already quoted: "Let the end be legitimate; let it be within the scope of the Constitution, and all the means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution are constitutional."<sup>217</sup> I believe what is proposed comes clearly within all these tests.

Is the end—the proposed proper regulation of the great manufacturing, trading, transportation and transmission companies—legitimate? Let holders of United States Steel common shares answer; let the investor in the shipbuilding trust exhibit his freehold in moonshine; let the careful investor even that gets the privilege of paying creditors when a bubble bursts answer;

<sup>216</sup> Since the above was written the Committee on Jurisprudence and Law Reform of the American Bar Association have reported: "1. That under the clause of the Constitution to regulate commerce Congress has no power to create corporations *except those which have for their object the carrying on of exclusively interstate business.*" The report was laid on the table. No authority was given in support of the report. So far as my investigation has gone I have found no court that states the power of the federal government in the same or similar words. Neither have I found any court that seems to take so restricted a view. It seems to me that the words I have italicized should be stricken out and others substituted so as to read: "1. That under the clause of the Constitution to regulate commerce Congress has power to create corporations which have for their object the regulation of interstate commerce." This is certainly in accord with the decisions, and also with the reports made to Congress from time to time by committees composed of the most eminent constitutional lawyers.

<sup>217</sup> *McCulloch vs. Maryland*, 4 Wheat. 316.

let the victims of Whitaker Wright, who learned his trade in America, answer; let the ghosts of Lawson's forty Amalgamated Copper suicides testify; let the creditor who can find nothing more than the shadowy form of an imaginary franchise to levy on when the evil day comes answer; let those who here pay \$24 for steel made here and sold in Europe for \$18 answer; let the thousands who have been pushed to the wall by a *predatory* competitor that observes none of the rules of civilized warfare answer; let all who regularly, though reluctantly, by a sort of vicarious atonement contribute to noble charities, not of their own selection, by paying an additional cent every month or two for oil reply; let the honorable railroad manager, forced to meet the cut rate of the dishonest, make answer; let those who eat meat or burn anthracite coal answer; let all everywhere who pay tribute to swell the dividends paid by the overcapitalized and inflated fiddlers answer.<sup>218</sup> Are there any except the beneficiaries to answer nay?

Is the end within the scope of the Constitution? The very end for which the Constitution was framed was to form a more perfect union in order to promote the general welfare. If the conditions above set forth disturb the general welfare and disturb legitimate commerce, as I believe they do, then to remove or remedy them is an end within the scope of the Constitution, and I have tried to show not that the ends justify the means, but that the means proposed are fairly and clearly within the Constitution also.

<sup>218</sup> See Reports of Industrial Commission generally, and in addition articles, *Cosmopolitan*, Aug., 1904, *Wall Street's Wild Speculation, 1900-1904*, Henry Clews; *Pearson's Magazine*, 1904, *Modern Methods of Finance*, series of articles by Henry George, Jr.; *Everybody's Magazine*, 1904, series of articles on *Frenzied Finance*, by Thomas Lawson; *McClure's Magazine*, 1903-1904, *Miss Tarbell's History of the Standard Oil Co.*; L. W. Sammis, *Relation of Financial Trust Co. to the Industrial Trust*, address, 1904, to *Am. Acad. Polit. and Soc. Sc.*; Report of James Smith, receiver of Shipbuilding Trust, Oct. 13, 1903; *World's Work*, Nov., 1903, p. 4064, *The Lesson of U. S. Steel Corporation*; *Ib.*, Jan., 1904, p. 4287, *Monopoly of Natural Products*; *Ib.*, Feb., 1904, p. 4445, *One Trust and What Became of It*.

Are the means appropriate, adapted to and adequate to the end and not prohibited? They certainly are not prohibited. If what I have before said is correct, practically none but the general government has adequate power. Are they then appropriate? We have good reason to think so. Our commercial condition is now analagous to that existing before the formation of the government and to the condition of our money system several times since. Before the Constitution commerce was disturbed by conflicting *state* regulations. Now it is disturbed by conflicting and inadequate state regulations of state-created commercial corporations. Then there was no government that could regulate the matter; now the only one that can does not. Then the disturbing element was the caprice of interested states; now it is not only that, but also the greed and avarice of their irresponsible and unregulated progeny, spawned for the purpose, that disturb our whole system. In short, our affliction is now a conflicting, unregulated, irresponsible corporate regulation, so far as there is any, instead of a uniform, sane, safe, fair, just and adequate national regulation. To meet the conditions 115 years ago, a new government, amounting to a revolution in form, was created. Shall we not, to meet present conditions, adopt the most direct and simple means, the wisdom of the founders of that government gave us, for the very purpose?<sup>219</sup> Can anything be more appropriate?

Our commercial condition now is also analagous to the money condition several times in the past. Congress is given power to *regulate* the value of money as it is to *regulate* commerce, the reason being the same in both cases—to secure uniformity for the welfare of all. In the debate on chartering a bank in 1816 John C. Calhoun, who will not be charged with *ultra nationalism*, significantly said: “The state of our circulating medium is opposed to the principles of the federal

<sup>219</sup> See McMaster's Hist. of U.S., vol. 1, pp. 204-8, 360-70, 390-9, 404-6; Ford's Federalist, pp. 36 (No. 7), 37n, 131-3 (No. 22), 275 (No. 41 or 42), 400 (No. 59 or 60).

Constitution. The power is given to Congress in express terms to regulate the currency of the United States. In point of fact, that power given to Congress is not in their hands. The power is exercised by 260 banking institutions, with \$80,000,000 capital, no longer responsible for the correctness with which they manage it. . . . By a sort of undercurrent, the power of Congress to regulate the money of the country has caved in, and upon its ruin has sprung up those institutions which now exercise the right of making money for and in the United States. . . . A change . . . which divests you of your rights and turns you back to the condition of the revolutionary war, in which every state issued bills of credit which were legal tender and of various value.”<sup>220</sup>

Like men of sense, to meet the conditions Congress immediately chartered the second Bank of the United States, of which the committee of the House of Representatives in an exhaustive report said, in 1830: “The present bank has actually furnished a circulating medium more uniform than specie, a currency of absolute uniform value in all places. . . . No country of anything like the same geographical extent has a currency at all comparable to that of the United States on the score of uniformity.”<sup>221</sup> This bank, however, by the help of President Jackson’s veto, went out of business when its charter expired in 1836, the era of state banking again began and straightway we had as bad a currency as ever afflicted a suffering people. So far as the currency could be said to be *regulated* at all, it was practically *relegated* to the private interests of 1600 “wild cat banks,” created in the several states, with an infinite variety of special powers under charters largely “based on ignorance, intrigue, favoritism or corruption,” without uniformity of creation, management, operation, liability, responsibility or regulation and issuing 10,000 different kinds of notes.<sup>222</sup> There was no national currency again

<sup>220</sup> Clarke & Hall’s Hist. U. S. Bank, p. 631.

<sup>221</sup> *Ib.*, p. 746, Report of Com. of H. of R., 1830.

<sup>222</sup> History of American Banking, Encyclopedia Americana; Johnston’s Hist. of U. S. in Encyc. Brit.

until the national banking act was passed in 1863 and no uniform one until the state bank issues were taxed out of existence in 1865. Do not these point to the direction in which our real and adequate remedies lie?

Perhaps it is proper here to note shortly some minor objections to the proposed plan. Some of these may be stated:

*Danger of corruption.*—If we have to stop because of this, then we will stop in the legislatures also, for all will agree they are more susceptible to such influence than the United States Congress. Perhaps a single annual dividend of the Standard Oil Company is sufficient to purchase all purchasable quantities in any or all legislative bodies,<sup>223</sup> but the detection of the stealthy hand in Congress arouses the whole country, and the whole country has its representatives there to right the wrong. Although a corporate charter granted by a single state legislature may be as potent as an act of Congress to disturb all the states, whether it shall be remedied depends upon the interest of the state alone from which it emanated.

*What reason is there for believing that the federal Senate would be more prompt than the New Jersey legislature to adopt some new and needed check upon corporate power?* asks the Commercial and Financial Chronicle. Perhaps none. Yet it is not generally supposed that New Jersey is in the corporation business entirely for the public health and welfare of the people outside that state, and it is generally believed that the Senate does have a decent respect for the remainder of the country, and if not the people have an adequate remedy. A single New Jersey corporation can block any adequate remedy possible by the other states acting alone; but two New Jersey senators can do only one forty-fourth of the damage in the United States Senate, and her representatives much less.

*Again, the same authority asks,* Would Congress be better fitted than the Massachusetts legislature to serve the legitimate

<sup>223</sup> These for the last four or five years have been from \$40,000,000 to \$48,000,000 per year.



corporate industry? It is not this kind that afflicts us, but the illegitimate corporate industry. Whoever heard of the simon pure trusts running to Massachusetts to get incorporated? And if they did, how could they compete with others? The true and simple answer to these three objections is that the good law of one state affects only that state; the bad corporation law affects all the states, yet none but the state enacting it can remedy it. A good national law would protect all, a bad one affect all; but all would be interested and have the power to remedy it.

*Another says that ninety per cent. of the business* of the people would be taken from the control of their own states and courts. This is pure assumption. The national banking law has had no such effect, and there is no reason that a federal corporation law need have. It is a matter that can be regulated by the provisions of the law as experience shall dictate. The object of such a law would be to displace diversity and uncertainty by uniformity and certainty. This decreases instead of begets litigation.<sup>224</sup> If state courts were relieved for this reason, taxpayers, at least, would not look upon it as a calamity. The federal courts are the courts of the people as much as the state courts, and adding to or taking from the jurisdiction of either is no reason for not enacting a law necessary and adequate to remedy well-attested evils. Other and more serious objections are considered under the next topic.

Is the plan proposed consistent with the letter and the spirit of the Constitution? I believe it is or I should not advocate it for a moment. We, however, are met here with objections which, if well founded, are serious. It is said: (1) Substantially all our civil rights would be brought under the control of the national government. (2) It would destroy wholesome

<sup>224</sup> It is stated that within the ten years after the enactment of the English Neg. Ins. Law only two cases of importance had been brought before the English courts. J. W. Eaton, *The Neg. Ins. Law*, N. Y. Bar Assn. 100, 103; Chalmers's *Bills and Notes*, 4th ed. preface.

checks and balances. (3) It would lead to enormous centralization of power. (4) State's rights would be riddled; and, finally (5), it would change the fundamental nature of our government. These indeed are serious, and time does not suffice to answer them fully. I can only indicate the direction wherein it seems to me correct answers lie. In order to answer sanely, however, I believe it better to be historical rather than to get hysterical. Most of the same objections have been raised and disposed of in forgotten debates on internal improvements, Pacific railroads, national banks, interstate commerce or anti-trust laws.

*As to the first*, bringing all our civil rights under the control of the national government. If what I have said before is true, their efficient control has already passed from the states into the irresponsible dominion of state-created corporations. I submit it is safer and wiser to place them under the responsible control of the federal government, I do not, however, believe there would be any shifting of civil rights that are legitimate from state to federal control. We live under a dual government; we have civil rights under state laws and under national laws;<sup>225</sup> the field of interstate commerce belongs to the federal government, not to the states; our civil rights in that field are held under the national laws;<sup>226</sup> because the national government has seen fit to leave it unfenced till this time does not alter the fact that it belongs to that government; neither is it altered by the fact that the states have in the meantime assumed jurisdiction over it and authorized their corporations to occupy it. The states are not adverse tenants; they surrendered all their title to the ground,<sup>227</sup> and it was so nomi-

<sup>225</sup> Slaughter House Cases, 16 Wall. 36; Hall vs. De Cuir, 95 U. S. 485; Civil Rights Cases, 109 U. S. 3.

<sup>226</sup> In Crutcher vs. Kentucky, 141 U. S. 47, 1891, Mr. Justice Bradley said: To carry on interstate commerce is not a franchise or privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States." To the same effect are the words of Mr. Justice Harlan in Reid vs. Colorado, 187 U. S. 137, 151.

<sup>227</sup> Mr. Justice Johnson, in Gibbons vs. Ogden, 9 Wheat. 1, 227, said:

nated in the bond, more than one hundred years ago; the states and their grantees have occupied the field since, not by right, but by sufferance, as licensees only. For the government to occupy the field and till it properly for the welfare of all may inconvenience some usurping squatter, but will not shift anyone's civil rights. Does anyone now argue that his civil rights are improperly shifted from state to federal *control*, because a federal quarantine law for the protection of all displaces local regulations inconsistent therewith? The states cannot give a *vested right* to occupy the government territory.

(2) *Destroy checks and balances.*—My view is just the reverse, and instead of destroying, it would restore them. The fundamental idea of checks and balances in our government was that equal state representation in the Senate would check any undue domination of the large states over the small; and upon the other hand proportional representation in the House would prevent a few of the small states from securing special advantages to themselves to the detriment of the large body of the people. If what I have said before is true, a thrifty state can do a paying business by issuing corporate charters, which, because of the inaction of Congress, disturb the balance of the other states, without adequate remedy. To check this objectionable practice only restores the proper balance. Neither the big nor the little states could impose upon the others, if the federal government properly performs the duty left to it in the only effective way.

(3) *Centralization of power.*—This is due to misconception of the real nature of our government. The exercise of power already existing in a central government is not a centralization of power; it all comes from the people; a hundred years ago, the whole governmental power was distributed by them between

“The power to regulate commerce here meant to be granted was *that power which previously existed in the states*. But what was that power? The states were unquestionably supreme, and each possessed that power over commerce which is acknowledged to reside in every sovereign state.” The same views were set forth by Mr. Calhoun in 1846 in Senate Doc., 1st Sess., 29th Cong., vol. 8, p. 410.

the federal and state governments to be used by each when occasion arose; in the words of Chief Justice Marshall: "The government of the union is emphatically and truly a government of the people. In form, and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit. . . . It is a government of all; its powers are delegated by all; it represents all; and acts for all."<sup>228</sup> And further, as he said, the Constitution was "intended to endure for ages to come, and consequently to be adapted to the various *crises* of human affairs."<sup>229</sup> In a matter, then, entrusted to its care, which affects all, and endangers all, and which no other can remedy, why should it not act? For a suffering people to ask the only agent to whom they have given adequate authority to exercise it for their protection and welfare is not dangerous centralization of power in any other sense than delegating adequate power to do anything necessary is dangerous concentration.

(4) *States' rights would be riddled.*—How? let me ask. What rights of the states were riddled by the national banking act? It is certain that many state-created humbugs were punctured by the national banking law, but I know of no one who now maintains states' rights were destroyed. Let us analyze the matter. Before the Constitution was framed, Minnesota could have prevented absolutely and in any way it chose any state-created Northern Securities Company from violating its anti-consolidation, or anti-trust laws. But now, armed with the privilege of engaging in interstate commerce, such a company defies the state and the nation. When Minnesota complains, it says, We are engaged in interstate commerce, and have the right under the federal government; when the federal government attacks it, it says, We are simply and innocently owning our property by the authority of New Jersey. Whatever may be the correct disposition of these cases under existing laws, it is certain that the federal government was

<sup>228</sup> *McCulloch vs. Maryland*, 4 Wheat. 316, 404-5.

<sup>229</sup> *Ib.*, p. 415.

not created for the purpose of enabling New Jersey to violate, or authorize anyone else to violate, Minnesota laws. The states and the people granted to the federal government, so far as interstate commerce is concerned, the power to interfere with state regulations that injuriously affected all, or whenever conditions required uniformity, for the protection of all; in fact the Constitution was framed for the very purpose of shielding one state from the disturbing practices of another. For the national government, under power delegated to it for that purpose, to protect Minnesota in her rights under federal laws, is not to shatter the *rights* of any other states, but only to shatter their presumption or temerity, or that of their creatures.

(5) Lastly, it is said it would change the fundamental nature of our government. Let us see.

It was Washington's dream to bind the East and West together by a highway for traffic and intercourse, and in 1774, he brought a bill before the House of Burgesses of Virginia to create a corporation for this purpose; a like bill was brought before the Maryland assembly; both were killed by existing *jealousies regarding Western trade*; <sup>230</sup> in 1777 New Jersey resolved that the *sole and exclusive* power of regulating foreign trade should be in the Continental Congress; <sup>231</sup> in 1785 that body also so resolved; in 1785, Washington suggested to the Joint Commission to regulate the navigation of the Chesapeake, that they should settle upon a *uniform system of duties, commercial regulations and currency*; these were sent to the legislatures of the states, and by resolution of the Virginia legislature the Annapolis convention of 1786 was called "*to take into consideration the trade of the United States, to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony.*" <sup>232</sup> Five states only responded to the call, but the New Jersey delegates were authorized to consider "*other important mat-*

<sup>230</sup> Historic Highways, A. B. Hulbert, vol. 3, pp. 108, 189-97.

<sup>231</sup> Secret Journals, Cong. 1, 359; Ford's Federalist, note p. 239.

<sup>232</sup> 1 Doct. Hist. Const., p. 2; Journal Constl. Conv., p. 36.

ters" than regulating commerce. This convention did nothing except to recommend the calling of the federal convention, saying in their call "they have been induced to think that the power of regulating trade is of such comprehensive extent and will enter so far into the general system of the federal government that to give it efficacy and to obviate questions and doubts concerning its precise nature and limits may require a correspondent adjustment of the other parts of the federal system."<sup>233</sup> This call was drawn up by Alexander Hamilton, and the federal convention met in 1787 to take into consideration the *trade* of the United States and other important matters and to create a government "*adequate to the exigencies of the union.*"<sup>234</sup> Whatever else may be said, this is certain, in the language of Webster, our present government "had its origin in the necessities of commerce, and for its immediate object the relief of those necessities, by removing their causes and by establishing a *uniform and steady system,*"<sup>235</sup> and as Justice Miller has said, it "was brought about by a desire to be released from the *evils of an unregulated and burdensome commercial intercourse* both with foreign nations and between the several states."<sup>236</sup> Such history alone justifies a liberal construction of the power entrusted to the national government whenever the exigency arises. But we can go a step further in finding the true rule of interpretation of this power, based upon the expressed intention of the founders. The sixth resolution of the Virginia plan of union submitted to the convention by Mr. Randolph immediately upon its organization reads: The national legislature ought to be empowered "*to legislate in all cases to which the separate states are incompetent or in which the harmony of the United States may be interrupted by the exercise of individual legislation.*"<sup>237</sup> This was not the mere expression of the sentiment

<sup>233</sup> Journal of Conv., p. 39.

<sup>234</sup> Journal of Conv., p. 41.

<sup>235</sup> Windom's Report, 1874, p. 85.

<sup>236</sup> Centennial Oration, Washington, Sept. 17, 1887.

<sup>237</sup> Madison Papers, p. 127.

of one man, but was the deliberate, reiterated and unanimous opinion of the convention, agreed to at least five different times.<sup>238</sup> The rule of construction and the rule of policy therefore are the same, whenever the states are incompetent or the harmony of all is disturbed by the individual legislation of one, the federal government should act in a matter entrusted to its care. Rhode Island or New York tariffs then disturbed the harmony of all the states, as New Jersey charters do now. For the national government thus to use a necessary and proper means of adequately regulating commerce according to existing exigencies instead of changing would be only carrying out the fundamental idea of our government as it existed in the minds of its founders.

The policy of complete federal control is not without support in our history.

For fifty years it was the reiterated policy of Jeffersonian democracy to urge the construction by the federal government of extensive works of internal improvements. Mr. Jefferson and several members of the party believed that a constitutional amendment was necessary, and they constantly urged that the Constitution be so amended as to enable the government to adopt such a policy.<sup>239</sup> The most elaborate report upon an extensive system of internal improvements by the construction of highways and canals ever made in this country was made by Albert Gallatin, President Jefferson's secretary of the treas-

<sup>238</sup> *Ib.*, pp. 127, 190, 374, 375, Proceedings May 25, 29, June 13, 15, 19, July 23 and 26.

<sup>239</sup> President Jefferson, in his inaugural address in 1806, proposed to have the surplus revenues of the U. S. partitioned among the states and applied "to rivers, canals, roads, arts, *manufactures*, education and other great objects within each state." In his annual message he recommended that the federal government continue to use its taxing power to raise revenue not needed for the federal government, but to be divided among the states to be applied to the purpose above stated. Naturally he thought this stretched the "general welfare" clause to such an extent that an amendment was necessary, and he repeatedly urged Congress to submit one. See 3 *Abr. Debates*, pp. 170-1, 485-7; *Jefferson's Works*, 8 vol. 494, Putnam's ed.

ury, in 1808.<sup>240</sup> Presidents Madison, Monroe and Jackson all vetoed bills for extensive internal improvements on constitutional grounds, but at the same time expressed a wish that the Constitution might be amended so such a policy could be adopted.<sup>241</sup> It was not the policy of the government undertaking these matters, but the lack of power, that troubled these fathers of democracy. For the first twenty-five years of the agitation for a Pacific railroad it seemed to be assumed by all that it should be constructed by the government, as was the national road, and the elaborate surveys therefor were made by the federal government in 1853-5 under the supervision of Jefferson Davis, President Pierce's secretary of war.<sup>242</sup> The first Pacific Railroad charter provided that in certain contingencies the government might enter and take possession of the road for itself.<sup>243</sup> The federal law authorizing a telegraph company that accepts its provisions to build its lines along any post road in the country provides that the government may at any time acquire such line by paying its value,<sup>244</sup> and for forty years many of the postmasters general and several congressional committees have urged the government to do this.<sup>245</sup> The Interstate Commerce Act is a positive expression of a policy to control the internal transportation system of the country, as was also the anti-trust act, and as to the latter no one who reads the debates can doubt that the intention of Congress in 1890 was to control the industrial and trading as well as the transportation trusts and combinations.<sup>246</sup> Both laws have been found defective. A few years ago President Roosevelt,

<sup>240</sup> Report Apr. 6, 1808, Am. St. Papers, class X; Miscellaneous, vol. 1.

<sup>241</sup> See Vetoes, in Richardson's Messages and Papers of the Presidents.

<sup>242</sup> History of Pacific R. R., Encyc. Brit. xix, 913; Davis, Hist. of Union Pacific Ry., pp. 35, 59, 96.

<sup>243</sup> See Charter, 12 St. at L. 489, 1862.

<sup>244</sup> Act of July 24, 1866, c. 230, § 3, 14 St. at L. 221, R. S. § 5267.

<sup>245</sup> 9 Indus. Com. R., pp. 243, 890; Report Postmaster General, 1892, p. 23 *et seq.* See also 4 Indus. Com. R. 24, 129-31, 724; 7 *Ib.* 204, 286-9; 9 *Ib.* 179, 193, 206, 241, 266, 884, 890.

<sup>246</sup> Bills and Debates in Congress on Trusts, 1885-1902, 57 Cong., 2d Sess., Sen. Doc. 147.



after the method of President Jefferson, advocated a constitutional amendment in order to meet our difficulties. On the other hand, the descendants of the Jeffersonian democracy, both in the direct and collateral lines, have just united in resolving that monopolistic trusts should be forbidden the privileges of engaging in interstate commerce. The plan I urge strikes a middle ground; it is not so inflexible as the first, nor so drastic as the latter; it proposes to use a constitutional power by the only competent and responsible government in a way flexible enough to meet the varying conditions that may arise, and if properly worked out and administered adequate to the end to be accomplished.

A still broader view is possible. The German Imperial Legislature creates, under a constitutional power to regulate commerce among the commonwealths, corporations to operate throughout the empire;<sup>247</sup> the new Australian Constitution confers upon the Parliament power in respect to trade among the states, and authorizes the creation of trading corporations to operate in all.<sup>248</sup> The Canadian Dominion Parliament exercises a like power under the British North American act.<sup>249</sup> The English Companies act authorizes the formation of companies to operate in the colonies.<sup>250</sup> What the greatest trading peoples of the world have found necessary and desirable is not an unwise policy nor an idle dream; what the most centralized and the most democratic governments have found useful is not a dangerous policy; still less will it be dangerous where the people, inheritors of all the great guaranties of liberty, from Magna Charta to our Constitutions, imbued with their spirit, govern themselves under the forms and substance of a Constitution framed by themselves, in order to promote the general welfare, and to secure the blessing of liberty to themselves and their posterity.

<sup>247</sup> 2 Burgess, Political Science, pp. 169-70.

<sup>248</sup> Clark, Australian Constl. Law, pp. 88, 405.

<sup>249</sup> The Const. of Canada, J. E. C. Munro, p. 256; Hassard, Canadian Constl. Law and Hist., p. 139; A. G. for Quebec vs. Colonial Bldg. and Loan Assn., 9 App. Cas. 157.

<sup>250</sup> Gore-Browne, Handy Book of Joint Stock Companies, 24th ed., p. 73.

**<sup>1</sup> DRAFT OF AN ACT FOR CODIFYING THE LAW RELATING  
TO THE SALE OF GOODS.**

*(As Revised after Consultation with the Conference of Commissioners on Uniform State Laws, at St. Louis, September 22, 23 and 24, 1904.)*

Be it enacted, etc., as follows :

**PART I.**

**FORMATION OF THE CONTRACT.**

**1.—(1.)** A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

**(2.)** A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

<sup>1</sup> The original draft of this act was prepared in 1902-3, by Professor Samuel Williston, of Cambridge, Massachusetts, at the request of the Conference of Commissioners on Uniform State Laws. It was printed in the summer of 1903 and sent with a request for criticism to teachers of the law of sales and to other experts on the subject. Some criticisms were received, and with the light of these criticisms and his own further reflection, the draftsman presented to the Conference of Commissioners on Uniform State Laws, at its meeting at St. Louis, September 22, 23 and 24, 1904, a number of suggested amendments.

The draft was then gone over carefully, section by section, by the Conference. Doubtful points and changes in wording were discussed and voted upon. The draft was then recommitted to the draftsman with instructions to embody the changes adopted in the Conference and to present a revised draft at the Conference in August, 1905.

The draft in its present form is the outcome of these instructions.

This form is not to be regarded as final. It is hoped that before August, 1905, those who are learned in the law of sales will give the act the benefit of their further consideration and criticism.

If they will do so, doubtless further improvements can be made.

Comment and criticism are solicited that the act may be made as perfect as possible before its adoption. Communicate with Professor Samuel Williston, Harvard Law School, Cambridge, Mass.

(3.) A contract to sell or a sale may be absolute or conditional.

(4.) There may be a contract to sell or a sale between one part owner and another.

2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of the sale and delivery.

#### *Formalities of the Contract.*

3. Subject to the provisions of this act and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

4.—(1.) A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be signed by the party to be charged or his agent in that behalf.

(2.) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to

others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3.) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods.

*Subject Matter of Contract.*

5.—(1.) The goods which form the subject of a contract to sell or a sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this act called "future goods."

(2.) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3.) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

6.—(1.) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2.) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears.

**7.—(1.)** Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

**(2.)** Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

**(a.)** As void.

**(b.)** As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible or to pay the agreed price for the goods in which the property passes if the sale was divisible.

**8.—(1.)** Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

**(2.)** Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

**(a.)** As avoided.

**(b.)** As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible.

*The Price.*

**9.—**(1.) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2.) The price may be made payable in any personal property.

(3.) Where a transfer or a promise to transfer any interest in real estate constitutes the whole or part of the consideration for an agreement to transfer the property in goods, this act shall not apply.

(4.) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

**10.—**(1.) Where there is a contract to sell goods at a price or on terms to be fixed by a third person, and such third person, without fault of the seller or buyer, cannot or does not fix the price or terms, the contract is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2.) Where such third person is prevented from fixing the price or terms by the fault of the seller or buyer, the party not in fault may have such remedies against the party in fault as are allowed by Parts IV and V of this act.

*Conditions and Warranties.*

**11.—**(1.) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first-mentioned party may also treat the non-performance of the condition as a breach of warranty.

(2.) Where the property in the goods has not passed, the buyer may treat the fulfilment by the seller of his obligation

to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods.

**12.** Any affirmation of fact or any promise by the seller in regard to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation, made in good faith, of the value of the goods, nor any statement, made in good faith, purporting to be a statement of the seller's opinion only shall be construed as a warranty.

**13.** In a contract to sell or a sale, unless a contrary intention appears, there is—

- (1.) An implied warranty on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of a contract to sell he will have a right to sell the goods at the time when the property is to pass.
- (2.) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale.
- (3.) An implied warranty that the goods shall be free from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.
- (4.) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest.

**14.** Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description; and if the contract or sale be by sample, as well as by description, it is not sufficient that

the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

**15.** Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows :

- (1.) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.
- (2.) Where goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.
- (3.) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.
- (4.) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.
- (5.) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- (6.) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith.

*Sale by Sample.*

**16.** In the case of a contract to sell or a sale by sample—

- (a.) There is an implied warranty that the bulk shall correspond with the sample in quality.



- (b.) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 33 (3).
- (c.) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

## PART II.

### EFFECTS OF THE CONTRACT.

#### *Transfer of Property as between Seller and Buyer.*

**17.** Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 6.

**18.—(1.)** Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2.) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

**19.** Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

**Rule 1.—**Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

**Rule 2.**—Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

**Rule 3.**—(1.) When goods are delivered to the buyer “on sale or return,” or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2.) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a.) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.

(b.) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

**Rule 4.**—(1.) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

(2.) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose

of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 20. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words Collect on Delivery or their equivalents.

**Rule 5.**—If a contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

**20.**—(1.) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer.

(2.) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3.) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(4.) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is endorsed in blank, or to the buyer by the consignee named therein, a *bona fide* purchaser, for valuable consideration, of the bill of lading or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

**21.** In the case of a sale by auction—

- (1.) Where goods are put up for sale by auction in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale.
- (2.) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid; and the auctioneer, unless he has announced that he will not do so, may withdraw the goods from sale.
- (3.) A right to bid may be reserved expressly by or on behalf of the seller.
- (4.) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer to employ any person to bid at such sale or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

**22.** Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not, except that—

- (a.) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.
- (b.) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

*Transfer of Title.*

**23.—(1.)** Subject to the provisions of this act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2.) Nothing in this act, however, shall affect—

- (a.) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.
- (b.) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

**24.** Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them

in good faith, for valuable consideration, and without notice of the seller's defect of title.

**25.** Where a person having sold goods continues in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying valuable consideration for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

**26.** Where a person having sold goods continues in possession of the goods, or of assignable documents of title to the goods, and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void.

### PART III.

#### PERFORMANCE OF THE CONTRACT.

**27.** It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale.

**28.** Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

**29.—(1.)** Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer, is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of

business, if he have one, and if not, his residence ; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2.) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3.) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf ; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4.) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5.) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

**30.**—(1.) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2.) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he

may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3.) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4.) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

**31.**—(1.) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2.) Where there is a contract to sell goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

**32.**—(1.) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 19, rule 6, or unless a contrary intent appears.

(2.) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery



to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3.) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit.

**33.**—(1.) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2.) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3.) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words Collect on Delivery, or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination.

**34.** The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

**35.** In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal

remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fail to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor.

**36.** Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

**37.** When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default.

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#### PART IV.

##### RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

**38.—**(1.) The seller of goods is deemed to be an “unpaid seller” within the meaning of this act—

- (a.) When the whole of the price has not been paid or tendered.
- (b.) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2.) In this part of this act the term "seller" includes any person who is in the position of a seller; as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

**39.**—(1.) Subject to the provisions of this act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has—

- (a.) A lien on the goods or right to retain them for the price while he is in possession of them.
- (b.) In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them.
- (c.) A right of resale as limited by this act.
- (d.) A right to rescind the sale as limited by this act.

(2.) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

#### *Unpaid Seller's Lien.*

**40.**—(1.) Subject to the provisions of this act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

- (a.) Where the goods have been sold without any stipulation as to credit.
- (b.) Where the goods have been sold on credit, but the term of credit has expired.
- (c.) Where the buyer becomes insolvent.

(2.) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

**41.** Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder,

unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention.

**42.**—(1.) The unpaid seller of goods loses his lien thereon—

(a.) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof.

(b.) When the buyer or his agent lawfully obtains possession of the goods.

(c.) By waiver thereof.

(2.) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods.

### *Stoppage in Transitu.*

**43.** Subject to the provisions of this act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

**44.**—(1.) Goods are in transit within the meaning of section 43:

(a.) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee.

(b.) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2.) Goods are no longer in transit within the meaning of section 43:

- (a.) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination.
- (b.) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee for the buyer, or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (c.) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf.

(3.) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent of the buyer.

(4.) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods.

**45.—**(1.) The unpaid seller may exercise his right of stoppage *in transitu* either by obtaining actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2.) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such redelivery must be borne by the seller. If, however, an assignable document of title

representing the goods has been issued by the carrier or other bailee, he may demand the surrender of such document of title, or, at the seller's option, a bond with sufficient sureties indemnifying the carrier or other bailee from liability to any holder of such document of title, before redelivering the goods.

*Resale by the Seller.*

**46.**—(1.) Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods *in transitu* may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2.) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3.) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4.) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5.) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale.

*Rescission by the Seller.*

**47.**—(1.) Where the seller expressly reserves such a right in case the buyer should make default, or where the buyer has

been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods *in transitu*, may rescind the transfer of title and resume the property in the goods. He shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2.) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted.

**48.** Subject to the provisions of this act, the unpaid seller's right of lien or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, an assignable document of title to goods has been lawfully issued or transferred to any person as buyer or owner of the goods, and has been subsequently lawfully transferred to a person who takes the document in good faith and for valuable consideration at any time while the goods are still in the hands of the carrier or other bailee which issued such document of title, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage *in transitu* can be exercised only subject to the rights of the transferee.

## PART V.

## ACTIONS FOR BREACH OF THE CONTRACT.

*Remedies of the Seller.*

**49.**—(1.) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2.) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3.) Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of section 50 (4) are not applicable, the seller may tender the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price.

**50.**—(1.) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2.) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3.) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or



current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4.) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages.

**51.** Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer.

#### *Remedies of the Buyer.*

**52.** Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

**53.—(1.)** Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for non-delivery.

(2.) The measure of damages is the loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3.) Where there is an available market for the goods in question, the measure of damages, in the absence of special

circumstances showing proximate damage of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

**54.** Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just.

**55.—(1.)** Where there is a breach of warranty by the seller, the buyer may, at his election—

- (a.) accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price;
- (b) accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;
- (c.) refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;
- (d) rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2.) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3.) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails

to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4.) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5.) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 46.

(6.) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7.) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

**56.** Nothing in this act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

## PART VI.

## INTERPRETATION.

**57.** Where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

**58.** Where, by this act, any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

**59.** Where any right, duty or liability is declared by this act, it may, unless otherwise by this act provided, be enforced by action.

**60.**—(1.) In any case not provided for in this act, the rules of the common law, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(2.) This act shall be so interpreted, if possible, as to effectuate its general purpose to make uniform the law of those states which enact it. Its interpretation shall not be aided by a consideration of peculiar rules of law previously prevailing in this state.

(3.) The provisions of this act relating to contracts to sell and to sales do not apply to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security.

**61.**—(1.) In this act, unless the context or subject matter otherwise requires—

“Action” includes counterclaim and set-off.

“Buyer” means a person who buys or agrees to buy goods or any legal successor in interest of such person.

“Contract of sale” includes an agreement to sell as well as a sale.

- “Defendant” includes a plaintiff against whom a right of set-off or counterclaim is asserted.
  - “Delivery” means voluntary transfer of possession from one person to another.
  - “Divisible” contract to sell or sale means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.
  - “Document of title to goods” includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, and any other document used in the ordinary course of business in the sale or transfer of goods as proof of the possession or control of goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by endorsement or by delivery, goods represented by such document. A document of title is assignable if it contains a promise to deliver the goods to the bearer or to the order of any person, even though marked “not negotiable” or “non-negotiable” upon its face.
  - “Fault” means wrongful act or default.
  - “Fungible goods” mean goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.
  - “Future goods” mean goods to be manufactured or acquired by the seller after the making of the contract of sale.
  - “Goods” include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
  - “Person” includes a corporation or partnership or two or more persons having a joint interest.
  - “Plaintiff” includes defendant asserting a right of set-off or counterclaim.
-

“Property” means the general property in goods, and not merely a special property.

“Quality of goods” includes their state or condition.

“Sale” includes a bargain and sale as well as a sale and delivery.

“Seller” means a person who sells or agrees to sell goods, or any legal successor in interest of such person.

“Specific goods” means goods identified and agreed upon at the time a contract of sale is made.

(2.) A thing is done “in good faith” within the meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3.) A person is insolvent within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

(4.) Goods are in a “deliverable state” within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

(5.) A person is deemed to have given valuable consideration who has taken goods in satisfaction of an antecedent claim, whether the antecedent claim is for money or not. A person is not deemed to have given valuable consideration who has taken goods as security for an antecedent claim.

**62.** All acts or parts of acts inconsistent with this act are hereby repealed.

**63.** This act shall come into operation on the                      day of  
one thousand nine hundred and

**64.** This act may be cited as the Sales Act.

PROCEEDINGS  
OF THE  
FIRST NATIONAL CONFERENCE  
OF  
STATE BOARDS OF LAW EXAMINERS.

*St. Louis, Missouri, September 27, 1904, 8 P. M.*

By arrangement of the Executive Committee of the American Bar Association, the National Conference of State Boards of Law Examiners was held in Recital Hall, on the Exposition grounds, on Tuesday evening, September 27, at 8 o'clock.

At the appointed hour, a large number of persons interested in this movement having responded to the call, Lucius H. Perkins, of Kansas, called the meeting to order and read the call for the Conference.

*(The Call follows these Minutes.)*

Mr. Perkins also made a brief statement of the history of the movement that resulted in this call for a National Conference, and concluded by placing in nomination for Temporary Chairman L. J. Nash, Vice-President of the Wisconsin Board.

There being no other nomination, he was unanimously elected, and, in taking the chair, expressed his satisfaction at the interest manifested in the movement.

Lucius H. Perkins was chosen Secretary, and Lucius W. Hoyt, of Colorado, acted as Assistant Secretary.

The Chairman directed the Secretary to call the roll of delegates—first, the representatives of State Boards of Law Examiners; second, the delegates of states having no boards, such delegates having been appointed by the governors; third, the delegates from accredited law schools.

At the conclusion of the roll call the Chairman announced that the regular programme would be first given, and all discussion deferred until the papers were read.

Thereupon the following papers were presented :

"The State Board—A Landmark in Lawyer-Making," by Lucius H. Perkins, of Lawrence, Kansas, Secretary of the Kansas Board.

"Practical Suggestions for the Conduct of Bar Examinations," by Hollis R. Bailey, of Cambridge, Massachusetts, Chairman of the Massachusetts Board.

"The Bar Examination from the Standpoint of the Law School Student," by W. E. Walz, of Bangor, Maine, Dean of the University of Maine School of Law.

*(The Papers follow these Minutes.)*

At the conclusion of the programme the chair invited a general discussion of the subject, which met with a hearty response. Indiana, Missouri, California and a number of other states having no boards were emphatic in their commendation of the movement, and the delegates pledged their best endeavors to bring their states into the system.

All the great universities and a large number of the standard law schools were represented by one or more delegates, who were unanimous in their approval of the movement and in their offer of co-operation.

A. A. Jackson, of Wisconsin, presented the following resolutions, which, after full consideration and discussion, were adopted :

"1. *Resolved*, That it is desirable that the members of the Boards of Law Examiners in the different states form an association for the purpose of adopting uniform methods in their work and establishing and maintaining standards of excellence.

"2. *Resolved*, That a committee of five members of Boards of Examiners be appointed by the chair to prepare and report to an adjourned meeting of the Conference a form of association with such by-laws as they may deem desirable.

"3. *Resolved*, That such committee also prepare a programme for the next meeting of this Conference."

Vasco H. Roberts, of the University of Missouri, offered the following resolution, and moved its adoption :



*“Resolved, That it is the sense of this Conference that the constitution of the permanent organization should provide for a representation from the American law schools with a right to such representatives to take part in the discussion of any business of the Association having for its object the form or methods of Bar examinations.”*

The resolution drew forth a lively discussion, and the opposition to the proposal came chiefly from the delegates from the law schools. After full consideration the vote was taken, and the resolution was lost.

The long discussion touching the attitude of the standard law schools to the Board movement developed the fact that a large majority of the delegates from the law schools were of the opinion that the management and control of the Conference should be strictly in the hands of the representatives of the State Boards of Examiners, but that the standard law schools should be invited to participate in the deliberations and aid in the counsels of the Conference.

A motion was adopted directing the committee to be appointed by the Chairman to arrange a suitable programme for the next annual meeting.

A motion was adopted that the Chairman should call together the committee to be appointed to meet at a time and place to be designated for the purpose of developing a plan for a permanent organization.

It was ordered that the next annual meeting should be held concurrently with the annual meeting of the American Bar Association.

No further business appearing, the meeting adjourned, subject to the call of the temporary Chairman.

LUCIUS H. PERKINS,  
*Secretary.*

After the adjournment of the meeting the Chairman appointed the following as the committee of five members of

Boards of Examiners to prepare and report a form of association, with such by-laws as they may deem advisable:

Lucius H. Perkins, of Kansas.

A. A. Jackson, of Wisconsin.

Weed Munro, of Minnesota.

George W. Wall, of Illinois.

Wesley W. Hyde, of Michigan.

#### CALL FOR A NATIONAL CONFERENCE OF STATE BOARDS OF LAW EXAMINERS.

One evidence of the movement to raise the standard of admission to the Bar is the fact that within recent years twenty-five states and territories have created State Boards of Law Examiners, and nine others have adopted some plan whereby they are endeavoring to establish a higher standard. The creation and work of these boards have materially assisted in restoring the legal profession to its rightful place among the learned professions, and the movement is steadily growing in popularity and power.

The meetings of the Association of American Law Schools (at the same time and place as the American Bar Association) have doubtless resulted, by the comparison of views and methods, in great benefit to the teachers in these schools. Benefits of the same character may be obtained by members of the State Boards of Law Examiners from like meetings.

These considerations have led to the suggestion of a National Conference of Law Examiners, to be held at St. Louis concurrently with the meeting of the American Bar Association, the Association of American Law Schools, the National Conference of Commissioners on Uniform State Laws, and the Universal Congress of Lawyers and Jurists.

It is thought best to invite all members of State Boards of Law Examiners, and delegates from all states and territories

which do not now have state boards, including the District of Columbia, and also delegates from all standard law schools in the United States, to meet in such a conference and discuss this work, in the hope that such an interchange of ideas may be beneficial.

Therefore, the undersigned, active members of State Boards of Law Examiners, hereby join in a call for a National Conference of State Boards of Law Examiners, to include (1) all the members of such boards, (2) one or more delegates from states which do not now have such boards, (3) one or more delegates from every standard law school in the United States; and that such Conference convene in the city of St. Louis, during the meeting of the American Bar Association, September 26 to 28, the exact hour and place of such meeting to be announced on the programme of the American Bar Association.

LUCIUS H. PERKINS,

*Secretary State Board of Law Examiners of Kansas.*

A. A. JACKSON,

*Secretary State Board of Law Examiners of Wisconsin.*

GEORGE W. WALL,

*President State Board of Law Examiners of Illinois.*

WEED MUNRO,

*President State Board of Examiners in Law of Minnesota.*

WESLEY W. HYDE,

*Secretary State Board of Law Examiners of Michigan.*

GEORGE D. WATROUS,

*Secretary State Board of Law Examiners of Connecticut.*

CHARLES W. MULLAN,

*Chairman State Board of Law Examiners of Iowa.*

CHARLES W. HARTSHORN,

*Chairman State Board of Bar Examiners of New Jersey.*

EDWARD C. STINESS,

*Secretary State Board of Bar Examiners of Rhode Island.*

## THE STATE BOARD—A LANDMARK IN LAWYER-MAKING.

BY

LUCIUS H. PERKINS,

SECRETARY OF THE BOARD OF LAW EXAMINERS OF KANSAS.

Gentlemen of the American Bar Association and Delegates to the National Conference of the State Boards of Law Examiners: If I were a preacher, and had to bring you my message through a text from the Holy Scriptures, I should select the words, "The former things are passed away," and "Behold, I make all things new." (Rev. xxi: 4, 5.)

It is charged that the law is so conservative, and that courts and lawyers are so hedged about by tradition and precedent, that the science does not progress, in equal pace, with the other great departments of human activity. We may answer that the conservatism of the law has been the sheet anchor of every nation, of ancient or modern times, that has contributed to the sum of human progress. But this does not relieve the profession from the charge of being the laggard; of looking backward; of seeking justification in precedent rather than principle, and only advancing when driven by the intellectual progress of the whole people.

In the early days of this nation the conditions were peculiar. There was a strong reaction against the injustice of the burdens imposed by the old world upon all who sought to enter a profession. The way had been long and hard, the difficulties many and the expense great. Reformers are extremists, and, as usual, the pendulum swung too far. Instead of requiring a student to become "articled" to a solicitor, and not only serve five years without compensation, but pay two hundred pounds sterling for the privilege, our liberty-loving fathers made the way easy. The young man was taken into the office, and more than likely into the family. He was advised what

to read, and his preceptor was in fact his teacher, guide and friend. No matter if it was some trouble, those were not such strenuous days, and the preceptor delighted in doing good and had the time to do it. When the young man had read some law, and learned some practice, his preceptor saw to it that he was admitted to the Bar, with small formality, and gave him his daughter to wife, and the young man became the junior partner, and finally the successor of his benefactor. This was ideal; and who shall say that some young men of to-day would not consent to return to this simple and certain road to affluence.

But this beautiful simplicity was fraught with danger. Not all preceptors were painstaking and conscientious, and not all students were zealous and honest and true. As one state after another came into being, and began to make its own laws, the idea of personal liberty was dominant, and every man was given the right to choose his own vocation. No country ever opened the door so wide. The vice was not apparent in the beginning, for the traditions of the old world and the great reputation of a few eminent lawyers saved the profession from becoming the prey of the ignorant and dishonest, who would have had neither place nor patronage in that primitive society.

But by degrees the open door was found by those who entertained no true idea of their high calling; who regarded the profession solely as the means to an end; men who never knew its ethics, and who prostituted its principles on all occasions. In every state uneducated and unprincipled adventurers found their way into the profession, to prey upon society, to profit by ignorant and dishonest advice, to promote dissension, cultivate quarrels, magnify slight grievances and plunge misguided clients into disastrous litigation.

So it came to pass that in the name of liberty there was founded upon the earth a new order, the great fraternity of shysters-at-law. You have all known them. They are in every community, and always and everywhere they are a menace to society. There is a wide range in their perversity. Bad

counsel and ignorance of the law are among their lesser vices. Who can count the treasure lost by plaintiffs who never had a cause, and who would never have gone to law had they been well advised? But the shyster-at-law lets no belligerent client escape. With wide-eyed astonishment he listens to a trivial tale, magnifies the grievance, inflames the passions and blinds the eyes to the possible justice on the other side. He cares not whether the client win or lose, if only he can pay. No matter how wrong or how hopeless the cause, when once the blood is up and the fight is on, the shyster wins. No need of clients to seek his advice. He lurks and lies in wait and watches his opportunity. If an old man sprain his knee alighting from a railway train, he sees ten thousand dollars damages and fifty per cent. contingent fees. He can scent a lawsuit in an Easter morning sermon. In resourcefulness of evil and varied and ingenious rascality nothing has yet surpassed the shyster-at-law. It is he who has brought a great and noble calling into disrepute, and caused many a man to regard the name of lawyer as a synonym for legal brigandage and slick dishonesty. The open door, inaugurated in the name of individual liberty, and preserved in our institutions for a hundred years, is responsible for the shyster-at-law.

It was long before the profession awoke to the gravity of these abuses and the necessity of correcting them. Vigorous laws were passed for disciplining unfaithful attorneys, and at long intervals an example was made in some aggravated case. The courts exacted the most scrupulous honesty from attorneys dealing with their clients, but all this did not reach the root of the evil. The shyster flourished and his tribe increased.

A remedy for these evils, and the purification of the Bar, were perennial themes for twoscore years. I speak from personal knowledge of Kansas, my adopted state, where for more than twenty years these subjects have engaged our Bar Association. Committees were appointed from time to time and numerous bills presented to the legislature, but always with the same result. Elaborate systems for regulating admissions

to the Bar were wrought out with infinite particularity, but every legislature turned them down, until some one hit upon the plan of a harmless-looking little bill vesting the exclusive jurisdiction in the Supreme Court. That solved the problem. The Supreme Court at once adopted a set of rules, and created a State Board of Law Examiners, empowered to make its own rules, subject to the approval of the court.

The Kansas board was created in July, 1903. It immediately organized and began serious preparation for work. We opened correspondence with all the states and territories, addressing the secretaries of the boards or the attorneys-general. We thus got into communication with all the state boards, and where there were none we learned the methods of examination. We did not want to begin where others had begun, and make anew all the mistakes which they had made, but we determined to draw from the universal experience and make a close study of the science, and if possible bring our state up to the highest standard thus far attained. We soon found that the states fall into three general classes:

1. Those that have State Boards of Law Examiners.
2. Those that have no board, but have some special methods of examination.
3. Those that still adhere to the obsolete and ridiculous methods that have tended to take the law out of the category of the learned professions, and justify the adage that he is an honest lawyer who has hair on his teeth.

The following states and territories have boards of examiners: Connecticut, Colorado, Georgia, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Wisconsin and Wyoming.

In all save Texas the whole matter is delegated to one state board, varying from three to fifteen members, with an average of about five. In Texas there are five separate boards, in different districts, all acting independently, but under stringent

rules of the Supreme Court. Pennsylvania adopted a very elaborate law last year. It provides for five examiners and five assistant examiners, and a separate secretary and treasurer.

As far as we are able to ascertain, Ohio was the pioneer, having had a board since 1880. Wisconsin dates back to 1885, but the movement did not attain much vitality until the middle nineties. New York and Michigan began to set a strong pace about that time, and were followed, in 1897, by Illinois and Massachusetts. Then they came rapidly. Last year Pennsylvania, Kansas, Texas, Oklahoma and Tennessee swung into line.

The second division includes at least nine: Alabama, Delaware, Montana, Nevada, North Carolina, North Dakota, South Dakota, Virginia and West Virginia. They have no state boards, but are trying to accomplish the same results. In some of them the Supreme Court sits as a board of examiners and has regular rules, and practically does the same work as is done by the boards. In West Virginia all applicants are examined by the law faculty of the University.

Thus the movement to bring the Bar up to a standard of respectability in morals and scholarship may now be said to include thirty-four states and territories, and the leaven is in the whole lump.

During the autumn of 1903 we opened further correspondence with all the other kindred boards and with the leading law schools in the United States and Great Britain, and with the councils of legal education, the incorporated law societies and inns of court in England. We also investigated the French and German methods of study and examination in the law. We opened an exchange list to include all the boards and standard law schools and law societies, and proposed to send them all the publications of our board, provided they would return the compliment. The suggestion met with hearty approval. No such general exchange among the boards, law schools and incorporated law societies had previously existed.



We have sent them our printed problems and most of them have reciprocated, and not a few have expressed their appreciation of the quality and standard of our work. This line of investigation would amount to a liberal education if carried to its logical conclusion, and has resulted in a mass of information which has been of inestimable value in laying broad and deep the foundations of this new system in Kansas.

The methods adopted by the Kansas board are in accord with the most advanced thought and the most successful experience in this work. We furnish each applicant a regular set of printed forms, consisting of an application, affidavit of the applicant, affidavit of his preceptor, and a certificate of the local district judge and three practicing attorneys that he is a person of good moral character and, if qualified, a suitable person to be admitted to the Bar. We also send a copy of the rules and a bulletin of information. The applicant is required to frame his petition to the Supreme Court, and it must be in his own handwriting. He files his petition in the office of the clerk of the Supreme Court, and sends a copy of it with all his other papers to the secretary of the board. In the application he gives his history, and especially the character of his education, the studies pursued, and what he has been doing for the past five years. One of the most important requirements is that he give a satisfactory account of himself, and no man will be received in the examination if there is any cloud upon his character. We cannot reach the rascals who are already in, but the State Board of Law Examiners stands between the shysters and the lawyers of the future. We cannot catch them all, but we shall stop those whose rascality is already known. Our requirements of preliminary education are equal to a four years' course in a standard high school. No diploma, *ipso facto*, admits the applicant to the examination. We reserve the right to determine what schools shall be accredited, and a diploma from a law school does not excuse the applicant from the preliminary examination, unless its standard of admission is up to the standard of the board. All

applicants are examined. Graduates from our own or any other university or law school are not exempt; but at the last session of the board a rule was passed providing that all applicants who have been admitted to the highest courts of another jurisdiction, and actually practiced for more than three years immediately preceding their application, may be separated into a class by themselves and examined in the discretion of the board. There were seven such in our last examination. They were examined orally for the purpose of satisfying the board that they were bona fide lawyers and actually engaged in the practice, and were intending to make the profession their life's work.

All other examinations are in writing. We propound eighty problems, divided into four sessions of three hours each. We require a few definitions, and ask a few categorical questions, but by far the greater number are hypothetical, and are intended to raise the ordinary questions that might be put to a lawyer any day. We ask no catch questions or any of extraordinary difficulty. Our aim is to test the applicant's mental caliber as well as his knowledge of the law, and we give good credit for a brainy answer even though the solution be wrong. It would be hard even for the judges of our inferior courts if they were to be disqualified as incompetent whenever the court of last resort reversed their decisions.

At the beginning of an examination the clerk of the Supreme Court gives each applicant a number, with which he signs all his papers. The board does not know one from another, and each performance is passed upon solely on its merits. This impersonal method relieves the board from every suspicion of partiality. The sons of a blacksmith and of the chief justice and of the members of the board all stand on exact equality, and will adorn a moral in flunks when their papers are not up to the mark.

I have dwelt on the methods of the Kansas board, thinking that as I speak from the most intimate knowledge of every detail you may be glad to have it at first hand. And further-

more, as this is one of the recent boards, which has drawn without reserve upon the best that could be found in the whole system, I offer it as a fairly good example of a board that is in the hands of high-minded and scholarly lawyers, who have undertaken the service without hope of reward, for the sake of a great cause, and in the hope of rendering a lasting service to their brethren of the Bar.

This meeting is one of the results of this mutual exchange of ideas. It seemed to some of those engaged in the work that a national conference would bring the boards into closer touch, and that each might profit by the experience of every other; that a comparison of methods might be a step towards greater uniformity in examinations, and that when the system was reduced to a science and the standard of each board was known there might exist such comity among the boards as would give some credit to the graduates of one board when applying to another and some faith in the thoroughness of the work of another board. The information contained in the records of one board might be at the disposal of another, and would be useful where an attorney, admitted upon examination, removed to another state. It was hoped that all the states and territories that had no boards would send delegates who should participate in this meeting and study the system. It was especially desired that all the standard law schools should be represented. While the work of the educator and the examiner are radically different, the end to be attained is the same. It is the work of the school to equip the applicant for examination. It is the work of the board to learn what ought to be a satisfactory preparation. In this there must be harmonious and concerted action. A fairly intelligent board of five experienced lawyers could prepare a set of problems that would flunk all the supreme courts in the world if they had no better chance to solve them than a class of boys in a room without counsel or books. Hence it is of as much importance for a board to be reasonable and fair as to be wise.

The examination of a board is likely to be more difficult than that of a school. The teacher knows what he may fairly expect. The boys have gone over the work, and he knows what they have had a chance to know. Not so the examiner. He meets his class in the examination for the first and only time. He is looking back over ten, twenty, it may be forty years of practice, and it is not so easy to remember what a young man ought to know. Therefore his task is difficult, and if he is wise he will take it seriously and study the science more profoundly than he ever studied his greatest case.

In this, as in everything else, experience is the greatest teacher. Happy the state which is able to find men who are willing to make the sacrifice, and contribute of their time, their thought, their talents and their labor in uplifting the profession, and bringing it to an exalted standard of morals and scholarship.

And so this meeting has grown out of the desire for a mutual interchange of ideas and plans and methods, and if it shall result in the permanent organization of a National Conference of the State Boards of Law Examiners, which shall hold a meeting every year and ultimately embrace every state in the union, it may become the greatest movement of modern times for the purification and elevation of the Bar.

# **PRACTICAL SUGGESTIONS FOR THE CONDUCT OF BAR EXAMINATIONS.**

**BY**

**HOLLIS R. BAILEY,**

**CHAIRMAN OF THE BOARD OF BAR EXAMINERS OF MASSACHUSETTS.**

Mr. Chairman and Gentlemen: We have met this evening for practical purposes, and I shall confine myself to the presentation of a few practical suggestions relating to our work as Bar examiners. In the insurance business they have what are known as "combined experience" tables, by which they regulate the cost of insurance. If at these meetings we can combine our several experiences, and so establish a higher standard for Bar examinations throughout the United States, these conferences will not have been in vain.

I bring as my contribution the results we have reached in Massachusetts after six years' experience. Prior to 1898 we had the county board system. You all know the evils of that system. I shall not attempt to enumerate them. In 1898 the legislature abolished the old method and established a state board of five examiners to be appointed by the Justices of the Supreme Judicial Court. The term of office was fixed at five years, the term of one member to expire each year. Most of the original members had served on the county board; one of the present members has been in office since the board was organized.

I speak of these facts to show the extent of the experience which lies behind the conclusions at which we have arrived. I shall discuss briefly the following points:

(1) Frequency of Examinations, (2) Places for Holding Examinations, (3) Directions and Suggestions for Applicants, (4) Petitions for Admission and Certificates Showing Qualifications, (5) Examination Questions, (6) Examination Books, (7) Marking Sheets, and (8) Pass Marks.

### 1. FREQUENCY OF EXAMINATIONS.

We have always had two examinations each year, one about July 1st and the other January 1st. I mention the July examination first because it is the one attended by the largest number of applicants. This is due to the fact that it is held shortly after the end of the school year, and many of our applicants come from the Harvard and Boston University Law Schools. We have nearly three hundred applicants at this July examination. We have less than two hundred at the one in January. No one, I think, has ever favored having more than two examinations a year. Some of our board are inclined to think that the July one is sufficient for the entire year. The principal reason for having the January examination has been that most of those who fail to pass in July desire to try again as soon as possible, and it is argued that requiring them to wait an entire year would be too much of a hardship. This argument has thus far prevailed, and the custom of allowing two trials a year has become too well fixed to be easily changed. One of the most serious objections to the examination in January is that it encourages the men, who are in the midst of their last year in the law schools, to try then instead of waiting until they have completed the law school course. When they come in January (and a good many do come) it not only interferes with their regular school work, but in case they pass it tempts them to leave the law school at once, which is usually a very unwise thing for them to do.

In regard to the length of our examinations, we have never tried more than a single day. We have two sessions of three hours each, with a noon intermission usually of two hours. This we find, on the whole, works well. It is less expensive for the applicants than two days would be, and still affords a reasonably fair test of their legal attainments. As was well said by a law school professor: "It does not take an ignoramus very long to show his want of knowledge." The work of the examiners in the way of reading and marking books is,

of course, much less with a single day's examination. This, however, ought not to have much weight as compared with giving the applicants a fair chance.

## 2. PLACES FOR HOLDING EXAMINATIONS.

With a single exception all our examinations have been held in Boston. One was given there, and also at the same time in Springfield, but the number who came to Springfield was small, and the experiment has never been repeated. The county boards usually held their examinations in the court house. As the number of applicants did not exceed fifty, suitable accommodations could be there provided. Having larger numbers to deal with, our board has been fortunate in obtaining, free of charge, the use of rooms in one of the high school buildings of the city. As we hold our July examination during the school vacation, and the one in January on a Saturday, when the public schools are not in session, we do not interfere with the regular work. This suggestion may be of value, as high school buildings with desks are available in most of the cities throughout the entire country.

## 3. DIRECTIONS AND SUGGESTIONS FOR APPLICANTS.

We have found it very desirable to furnish the applicants with some printed directions for their guidance. Hitherto we have printed these on a single page, and have distributed them at the beginning of the examination. Since last July we have decided to make these suggestions and directions somewhat fuller, and are going to try the experiment of giving them to the applicants before the day of examination. This will afford them an opportunity to examine the suggestions and directions with more care, and will not take their time when needed for the answering of questions. We print a small pamphlet containing statutes and rules relating to admission to the Bar. We have always distributed these to the applicants some time before the examination. We shall here-

after at the same time give out a leaflet containing our suggestions and directions. I have brought for your inspection a copy of the pamphlet and leaflet.

#### 4. PETITIONS AND CERTIFICATES.

In the matter of petitions for admission and certificates showing qualifications the practice used to be to let the applicants fill these out at the beginning of the examination; the result was that the work was done very hurriedly and often very poorly, and the applicants were robbed of time which they needed for answering questions. During recent years, however, we have required the students to fill out and file their petitions and certificates some time in advance. We furnish printed blanks both for petitions and certificates. I have with me specimens of these blanks.

#### 5. EXAMINATION QUESTIONS.

We used to have forty questions, twenty on the forenoon paper and an equal number in the afternoon. We found that this number was too large for at least one-third of the applicants, and finally reduced the number of questions to thirty, fifteen on each paper. The results have justified the wisdom of the change. Very few now fail to answer for want of sufficient time. We ask some questions calling for general knowledge, but most of them are in the shape of a statement of facts, such as might be given by a client in actual practice with an inquiry as to the proper advice to be given or the proper decision to be rendered thereon. We sometimes ask for a general statement of a rule or principle, and then assume a state of facts with an inquiry requiring for its proper answer an understanding of the rule or principle in question. We believe that more than one-half of the questions should consist of such hypothetical statements with an inquiry calling for an exercise of the understanding as well as the use of the memory of the applicant.



## 6. EXAMINATION BOOKS.

We have tried different kinds and weights of paper, and have finally adopted a book of sixteen pages of medium weight paper with ruled lines. We have the leaves numbered from one to fifteen, and direct the men to begin each answer at the top of the proper page. We have a label on the outside cover for the name of the applicant. The books are distributed upon the desks before the hour fixed for the beginning of the examination, and each applicant must write his own name upon the outside of his book. This serves as a means of identifying the candidates. There are two men now under indictment in Massachusetts for falsely impersonating applicants at a civil service examination held by the post office civil service examiners. The evil is one which needs to be guarded against in the conduct of our Bar examinations.

## 7. MARKING SHEETS.

It has been sometimes suggested that the best and fairest way to determine the value of answers is to read an entire examination book, and then make a note of the general impression produced upon the examiner. This is doubtless a safe enough way where the answers are all very good or all very poor. But in the doubtful cases something more exact is required, and so we adopted and used for a time what we called marking sheets ruled with spaces for names of candidates, for numbers of questions, for marks upon each question, for total of marks, and for total percentages. These were of great assistance, but were not very convenient either for immediate use or future reference.

We have now adopted marking books, properly ruled of about the size of a stenographer's note book. The pages are numbered and the names of the applicants written alphabetically, one on each page.

Finally, in order to compare at a glance the marks of the different examiners upon each question, we have had slips properly ruled and printed with the names of the examiners,

the numbers of the questions and places for the marks and totals, and have had one of these slips pasted on the inside of the book cover of each examination book. When an examiner has read an answer he decides what value to give it, writes the mark in his marking book, and finally writes it on the slip at the back of the examination book. In this way he reaches his conclusions independently. If, however, he finds his mark is very different from that of the other members who have already read and marked the answer he can at once reread it, and, if need be, revise his finding. This we have found to be of great value. It adds little to the work and increases the accuracy of the results. I have here specimens of our marking books, and also of our examination books, with the slip above described.

#### 8. PASS MARKS.

We have never announced any pass mark. Each member has fixed his own, having regard to his own method of marking. If a member marks very strictly, his pass mark may be 50 per cent. If another marks very liberally, his may be 60 per cent., and so on. The results have proved to be practically the same.

If two members of the board have read an applicant's book and have marked, "Yes without doubt," the other members, as a rule, do not read those books. If three members of the board (being a majority) have read the books of an applicant and have marked, "No without doubt," the other members, as a rule, do not read those books further. In doubtful cases the books are often read by all the examiners. We are still considering methods of reading and marking, and are not at all certain that ours is the best one.

We have usually rejected about 40 per cent. of the candidates. We consider that the length of study and the character of the preparation should be given weight, but do not feel at liberty to admit applicants who fail to pass the required examination.

## CONCLUSION.

The work of an examiner is difficult and laborious. It involves great responsibility. Bar examiners must be impartial and incorruptible, and, withal, they must be industrious. The standing of the profession very largely depends upon the manner in which we do our work. Let us then aim to be worthy of the trust which is reposed in us by the court and by our brethren.

## THE BAR EXAMINATION FROM THE STAND- POINT OF THE LAW SCHOOL STUDENT.

BY

W. E. WALZ,

DEAN OF THE UNIVERSITY OF MAINE SCHOOL OF LAW.

The Bar examination forms the chief trial of a law student's life. The average student would, no doubt, prefer the old traditional Bar examination conducted by a kindly disposed judge who, after some introductory remarks on the weather, asked a few questions as to what law books the applicant had read, where and how long, and who then wound up the examination by a genial handshake and the pleasant question of, "What will you have?" No law school student, however, desires, to my knowledge, a return to those other and still more remote days—such as existed in some of our states, in Maine, for instance—when for more than a decade a certificate of good moral character was all-sufficient to admit a man to the Bar—a state of affairs well characterized by the late chief justice of Maine, John A. Peters, when he said that every man without exception had a good moral character, for a man's character was either good for something or else good for nothing; but it was good, of course, in either case.

These good old times, if such they were, are gone, never to return, and to-day, in twenty-five states of the union, state boards of law examiners ask impartially law school and law office students alike not "What will you have?" but "What do you know?" The law school student wisely answers this question by another, "What do you expect me to know?"

It would seem, then, the first duty of a state board to give the applicant for admission to the Bar an idea of what he is to be examined in, not in a vague and uncertain manner, but in a tangible and easily understood form. Our own state board, that of Maine, has enumerated definite subjects, such as con-

tracts, torts, criminal law, pleading, evidence, bills and notes and equity, in each of which there is a paper of about ten questions, more or less, followed by what is known as an omnibus paper, in which the board puts questions on partnership, insurance, agency, damages or any other subjects of admittedly minor importance in this connection. This seems to me a most excellent way that might well be followed by other state boards. The student has thus fair notice of what is coming; no subject can safely be slighted by him at the law school on the plea that the state board did not deem it worth mention, while in the larger law schools, where the elective system prevails for junior and senior subjects, this policy of the state boards will strongly counteract the well-known tendency of some students to look for what are considered easy and soft electives. A definite policy along this line followed by all the state boards with as much uniformity as may be possible will be welcomed by law schools and law students alike.

Every state ought, in the second place, to vote enough money to enable its state board to print and publish the Bar examination questions, so that old examination papers may be liberally supplied to applicants for admission to the Bar. To be told that he will be examined in equity or real property, for instance, conveys little meaning to the average student, but when he receives an old examination paper and tries to answer its questions he understands more readily what the examination really is, and that to pass it means work and steady application. The publication and distribution of these papers will not only meet a reasonable wish of law school and law office students, but it will powerfully tend to promote the much-desired uniformity of standard among state boards similarly situated.

State boards should, in the third place, inform students not only how they stood in each subject, as is done in Maine, for instance, but where a student fails; also how he was marked on each question, provided, of course, he cares for the information. Many students seem to desire this detailed knowl-

edge of their mistakes only because they think they cannot get it, but if such information were offered when wanted, as it is in the great majority of law schools, it would bring the practice of the state boards and law schools into greater uniformity.

Last, not least, in view of their arduous work—the more arduous the more conscientiously it is done—members of state boards should receive a liberal compensation. Correcting examination papers is truly the most difficult and most responsible of all work, and was once compared by a Harvard professor to hard labor in the penitentiary, a slight exaggeration, perhaps, as the professor had no personal data to go on, and knew penitentiary life only from hearsay. Let us hope that the future, to the great relief of state boards and law school faculties, will evolve for us the examination expert who is to select the doubtful cases only for the final decision of the authorities competent in the matter.

These suggestions here submitted, as well as many others that may be elicited in the discussion of this paper, will not only satisfy reasonable wishes on the part of the law school student, but they will also tend to promote uniformity between the state boards as well as between them and the law schools.

In conclusion, let me point out to you one effect the state board movement has had upon the law schools, and another that it is likely to have upon them in the future. This movement has called the attention of office students, too poor to take an entire law course, to the desirability of studying law systematically at some law school, and for such a length of time as may seem possible to them. Practical results, certainly, have demonstrated the wisdom of such a course when followed. Hon. William P. Goodelle, President of the New York State Board of Bar Examiners, said at the Conference of State Boards in 1898, among other things: "The growing appreciation of a law school course will, in my judgment, result before many years in the Court of Appeals requiring by its rules that some portion, at least, of a legal course of study

shall be had in a law school.”<sup>1</sup> If I can judge, gentlemen, from what I know of Maine, it seems to me that young law office men are inclined to take this course of their own accord, and without any other compulsion than that of a strong desire on their part to meet the increasing requirements of the different state boards.

Another fact brought out by the state board movement is this: that, as regards success at the Bar examinations, the smaller law schools have done better than the larger institutions. In the State of New York, if I am correctly informed, the law schools at Albany and Syracuse stand in this respect ahead of the larger schools of New York city. As to Maine, the average of the students of the University of Maine School of Law was higher last year than that of the Harvard Law School men applying for admission to the same Bar; while this summer the marks of the University of Maine students were so much higher than those of the Harvard men as to constitute a notable feature of this year's Bar examination in the state. The reasons for all this are not far to seek. The state boards naturally lay stress on the law of their own states, and unless a student at a large school makes a private and special study of the peculiarities of the laws of his own jurisdiction, he may easily find himself overtaken by men from smaller institutions—schools that from choice or from necessity or both confine themselves in their discussions of legal principles more to actual cases decided in their own and neighboring jurisdictions, using these, preferentially, for the purpose of illustrations, rather than seek for them in the distant but attractive bays and inlets of that vast and almost boundless sea known as the Anglo-American law. Another, and possibly stronger, reason for this difference in results lies in the fact that smaller classes can be taught more easily and more thoroughly than larger ones, where paying attention to individuals is practically out of the question, and where the weaker men fall hopelessly to the rear. The third and strongest reason, however, for this

<sup>1</sup> Reports of the American Bar Association, Vol. XXI, p. 534.

difference is that most students in the smaller schools are poor, must earn their living while going to school, and succeed because they must either succeed or else, as it seems to them, fail totally, miserably and forever. Bitter tragedy awaits them, or else high success. But, on the whole, necessity and toil are the parents of success to-day as they were in the good, strong days of old; and there is neither teacher of law school nor member of state board, however sternly he may seem in a given case to bar the way to diploma or to entrance upon professional life, that would not far, far rather see such a man succeed than fail.

The state board movement will undoubtedly, in course of time, bring about changes in the policy of the larger law schools. The classes will be reduced to more manageable dimensions, and the teaching force will be increased to meet the necessities of the taught. The students themselves are beginning to give more attention to the laws of their own states while studying what they call "the general law" as taught in schools whose noble and generous ambition it is to be known as national rather than as state or local institutions. The most probable result of the state board movement, however, will undoubtedly be that the larger schools will try to remedy the defects of a too wide and general instruction by organizing special classes in which the particular laws of the states most numerous among the student body will receive special attention possibly with tacit, possibly with avowed, reference to the Bar examination.

Great, indeed, is the power of a state board. It can within limits direct the teaching in the meanest law office of the state, and at the same time mould the policy of the most powerful law school. Let each law school and each state board do its duty, and there can be between them no clash, but only mutual good will—a fact amply substantiated by the relations existing between the state board and the law school of my own state, where both have co-operated harmoniously, because each has kept within its own sphere, and because each has appreciated the work done by the other.



# OBITUARIES.

## COLORADO.

### TIMOTHY FRANCIS McCARTHY.

[From Denver Bar Association Memorial.]

Timothy Francis McCarthy was born at Milwaukee, Wisconsin, in 1863, and died at Denver, Colorado, October 30, 1903.

He was admitted to the Bar of Wisconsin in 1885, and practiced in that state for several years. In 1890 he moved to St. Louis, and remained there until 1895, when he moved to Colorado Springs, and was in active practice there until January, 1898, and, upon the organization of Teller County, moved to Cripple Creek. In the spring of 1901 he moved to Denver, and became a member of the law firm of Potter & McCarthy.

While in St. Louis Mr. McCarthy was general counsel for one of the bonding and surety companies of that city. In Colorado his practice was especially in mining litigation and general corporation work, and he was employed in some of the most important lawsuits in the Cripple Creek district, involving novel points and interests of great magnitude. He was professionally associated with some of the greatest mining properties, and was counsel in the Gold Coin, Victor, Cameron, Gillett, Golden Cycle and Vindicator litigations.

In the last year of his life he conducted the trial of the Sedan-Sunshine case—the first apex case of any importance ever determined in Teller County, Colorado—which was tried three times before a jury, and consumed altogether over forty days in the actual trial.

As a trial lawyer, both before court and jury, Mr. McCarthy was impressive in his manner, and, while quiet in demeanor, was always sincere and forcible in argument. In appeal cases

he had the art and tact of separating the important matters from the unimportant, and his name appears often in the reports of the Supreme Court and of the Court of Appeals of Colorado.

He was a conscientious and painstaking student and practitioner, never overlooking the interests of his clients, and his future promised a brilliant career in his profession. In personal qualities he was sympathetic and generous to a fault, courteous in his manner, and a gentleman at all times.

In 1896 he was married to Miss Nannie Barbour, of Hopkinsville, Kentucky, who died at Chilton, Wisconsin, August 1, 1903. His devotion to his wife was very marked, and the grief over her death caused wounds of sorrow from which he never recovered.

By his death, his clients lost a faithful and devoted advocate, his many friends a genial and sympathetic companion, this state an estimable citizen, and the Bar Associations with which he was connected a worthy member.

#### LESTER McLEAN.

On December 3, 1904, Lester McLean, of the firm of Bicksler, McLean & Bennett, Denver, Colorado, died suddenly, the cause of death being heart failure. In Mr. McLean's death the Denver Bar lost an able and honored practitioner, the city a useful citizen, and the American Bar Association a worthy and respected member.

Born at Salem, Pennsylvania, on December 31, 1846, Mr. McLean was graduated from the literary department of the University of Michigan in 1872, and from the law department of the same institution, with the degree of bachelor of laws, in 1875. He was admitted to the Michigan Bar in 1874, to the Ohio Bar in 1875, and to the Colorado Bar in 1892. Mr. McLean began his practice at Elyria, Ohio, where he was associated with John C. Hale, under the firm name of Hale & McLean, which later, upon Mr. Hale's election to the Ohio Circuit bench, became McLean & Sharp and McLean & Ingersoll. In 1892, on account of the health of his daughter, Mr.

McLean removed to Denver, and was thereafter, until his death, connected with W. S. Bicksler, at first as Bicksler & McLean, and later, when Edmon G. Bennett became a member of the firm, as Bicksler, McLean & Bennett. From his long experience and wide practice in the state and federal courts, Mr. McLean gained an enviable reputation as a resourceful lawyer.

In 1876, Miss Mary D. Shaw, of Detroit, Michigan, became his wife. She and their six children survive him.

## CONNECTICUT.

### LYMAN D. BREWSTER.

Lyman Dennison Brewster, son of Daniel and Harriet (Averill) Brewster, was born in Salisbury, Connecticut, on July 31, 1832. He was a descendant in the sixth generation of Elder Brewster, of the Plymouth Colony. He prepared for college at Williams Academy, in Stockbridge, Massachusetts, and was graduated at Yale in 1855.

After graduation he began the study of law at Danbury, Connecticut, with Roger Averill, subsequently lieutenant governor of the state. In 1857 he traveled in England, Switzerland and Italy, and after his return was admitted to the Connecticut Bar January 21, 1858, and settled at Danbury. He formed a partnership with Elias Fry under the firm name of Brewster & Fry, and was later associated with his former preceptor, Mr. Averill. In 1871 he became associated with Samuel Tweedy, and in 1878 Howard W. Scott was admitted to the firm, then known as Brewster, Tweedy & Scott. This firm was dissolved in 1892, and the following year Samuel A. Davis, and in 1899, his nephew, J. Moss Ives, came into business with him, the title of the firm being Brewster, Davis & Ives.

He gave close attention to the practice of his profession, but not to the neglect of literary culture. As a trial lawyer, his

thorough preparation of cases and the clearness of his briefs were generally recognized. He was counsel in many important cases in his own state, and his success in the suit in New York invalidating the will of Samuel J. Tilden brought him a still wider reputation.

In 1868 he was Judge of Probate of the District of Danbury, and in 1870 he was appointed the first Judge of the Court of Common Pleas of Fairfield County, and served four years. In 1870, 1878 and 1879 he represented Danbury in the lower house of the state legislature. In the latter years he served on the Judiciary Committee, and in 1878 as chairman of the Committee on Constitutional Amendments. In that year he was appointed a member of the Commission on a Reformation of Civil Procedure, whose work resulted in the drafting and adoption of the Connecticut Practice Act, which David Dudley Field pronounced the best adaptation of the principles of code pleading to local convenience yet devised. It follows the example of the English Judicature Act, in leaving details to be worked out by rules of court. In 1880 and 1881 he was a member of the state senate and chairman of the Judiciary Committee.

Judge Brewster devoted much time during the later years of his life to the movement for uniform state laws, and was largely instrumental in securing the general adoption of the Negotiable Instruments Act. From 1890 to 1903 he was chairman of the Committee on Uniform State Laws of the American Bar Association, of which he was an original member, and the meetings of which he regularly attended. In 1896 he was elected President of the National Conference of Commissioners on Uniform State Laws, being re-elected each year until his resignation in 1901. He was an earnest advocate of the codification of all branches of commercial law, and his last work was the preparation of a paper on "A Commercial Code," which he read before the New York State Bar Association at its meeting in Albany in January, 1903. Almost immediately after reading it he was stricken with par-

alysis, but recovered to a large degree. He died in sleep at his home in Danbury on February 14, 1904, in the seventy-second year of his age.

He was identified with the Danbury Public Library, the Danbury Relief Society, the Danbury Hospital and other local institutions.

He was a graceful versifier, the poet of his class, and both in college and after graduation wrote a number of poems, which were recently gathered in a booklet entitled, "Youth and Yale."

Judge Brewster was always a favorite wherever he went. With a keen wit, with a warm heart and kindly disposition, men respected him for his judgment and loved him for his character.

He married on January 1, 1868, Sarah Amelia, daughter of George W. and Sarah (Wilcox) Ives, of Danbury, who survives him. They had no children.

### STEPHEN WRIGHT KELLOGG.

Stephen Wright Kellogg was born in Shelburne, Massachusetts, April 5, 1822, and was graduated at Yale College in 1846. He received his legal education at the Yale Law School, and was admitted to the Connecticut Bar in 1848, when he began the practice of law at Naugatuck, removing to Waterbury in 1854, where he spent the rest of his life. In 1853 he was a member of the state senate. From 1854 to 1861 he was judge of probate for the District of Waterbury. In 1864 he was judge of the county court, and later, for many years, was city attorney of Waterbury. In 1869 he was elected to the House of Representatives of the United States, and re-elected in 1871 and 1873, serving as chairman of the House Naval Expenditures Committee in one Congress and of that on Civil Service Reform in another. He took an active interest in the state militia, rising to the rank of brigadier general. In 1900 he was a presidential elector on the Republican ticket.

His interest in public affairs, whether local or national, was always warm. From 1868 until his death he was one of the Board of Agents of the Brownson Library of Waterbury.

As a lawyer, he was diligent, active and successful. As a man, he was kindly, companionable and beloved.

His religious connections were with the Congregational denomination, and he was a deacon of the Second Congregational Church of Waterbury from 1888 until his death, at Waterbury, January 22, 1904, after a brief illness from an attack of pneumonia.

#### FRANCIS WAYLAND.

Francis Wayland was born at Boston, August 23, 1826, and died at his residence, in New Haven, Connecticut, on January 8, 1904. He was a son of Francis Wayland, D.D., LL. D., president of Brown University, and was graduated at that institution in 1846. After studying law at the Harvard Law School, he began practice in Worcester in 1850, but removed to New Haven in 1858. Here he was elected judge of probate for the District of New Haven in 1864, and lieutenant-governor of the state in 1869. In 1871 he was appointed an instructor in the Yale Law School and in 1872 a professor of law. The next year he was elected dean of the faculty, and retained this position until 1903. Its rapid growth in numbers and prosperity during this period was largely the result of his unwearied exertions and wise administrative ability. He was deeply interested also in matters of prison reform, and served as president of the board of directors of the Connecticut state's prison for fourteen years and of the Connecticut Prisoners' Aid Association from 1875 until his death. He occupied for a time the position of chairman of the executive committee of the National Prison Congress, and contributed important papers on penology to the transactions of the American Social Science Association, of which he was for some years president, and for many years one of the principal officers. He was president for twenty-five years of

the Organized Charities' Association of New Haven. In 1874 he was president of the United States Board of Visitors at West Point, and in 1880 vice-president of the like board at Annapolis. In 1867 he wrote, in collaboration with his brother, Rev. H. L. Wayland, D.D., a biography of their father in two volumes. Professor Wayland received the honorary degree of M.A. from Yale in 1881, and LL.D. from Rochester University in 1879, and from Brown University in 1881. Of the latter institution he was a trustee from 1872 to 1888, and a fellow from 1888 till his death.

Dean Wayland was a man of commanding presence and great personal charm of manner. His friends were many and sincere, and in whatever cause he enlisted he showed himself a faithful, intelligent and untiring worker. He left a widow (daughter of the late Ezra C. Read, of New Haven), but no children.

The following minute was adopted by the faculty of the Yale Law School concerning his death :

“The faculty of the Yale Law School desire to place upon their records the expression of the deep sorrow felt by each at the death of Judge Wayland, so long their presiding officer.

“For more than thirty years the advancement of the interests of the school has been the main object of his life. To this he devoted his time and thought in full measure, and he was happy in seeing, from one decade to another, a steady and unbroken progress in all the lines on which he led the way. To him more than to any other the school owes its library, its buildings and its endowments. One of the latter was his own gift, and has been of conspicuous use in promoting in the university the proper cultivation of the power of forensic debate.

“Inheriting from his father, so long the distinguished head of Brown University, the faculty of wise executive administration, he brought it to the service of Yale, in raising this department to a position of strength and usefulness which it had never before attained. He exercised the office of dean with untiring energy, sustaining its many responsibilities with dignity and judgment, and endearing himself both to his associates and to the students under his charge.

"His failing health, when it compelled him to resign to others the place of leadership, did not abate his interest in the school, and his efforts to promote its prosperity ended only with his life."

## ILLINOIS.

### JOHN HENRY HAMLINE.

John Henry Hamline was born in Hillsdale, New York, March 23, 1856, and died February 14, 1904, at his home in Chicago.

In his early infancy his parents removed to Mt. Pleasant, Iowa. His father was Leonidas P. Hamline, a physician, and his grandfather was Leonidas L. Hamline, a bishop of the Methodist Episcopal Church. In 1865 Dr. L. P. Hamline removed with his family to Evanston, Illinois, where John H. Hamline spent his youth, attending the public schools and Northwestern University, from which institution he was graduated in 1875, with the degree of Bachelor of Arts. In college he displayed the same qualities of leadership which distinguished him in after life. After two years of study at Columbia Law School, New York, from which he was graduated in 1877, he took his examination for the Bar in Illinois, was admitted September 14, 1877, and immediately entered upon the practice of law in Chicago, and pursued it in that city until his death. His home was still in Evanston, of which village he was elected corporation counsel in 1880, an office which he held until 1884. Thus early in his practice his attention was closely and practically drawn to municipal and constitutional law, and he acquired an extensive and thorough grounding in those branches of which he made effective use in later years.

In 1885 he removed to Chicago, where he made his home for the remainder of his life. In 1886 he entered into partnership with Frank H. Scott, under the firm name of Hamline & Scott, and in 1889 Frank E. Lord became a member of the firm, the name of which was changed to Hamline, Scott &



Lord, and so continued until Mr. Hamline's death, Mr. Redmond D. Stephens becoming a member of the firm in 1902.

In 1887 Mr. Hamline was elected, and served one term, as a member of the common council of the city of Chicago, and by his vigorous and courageous discharge of the duties of that office challenged the attention of the community. The principle of enforcing compensation for municipal franchises was advocated in the council for the first time by him, and a measure providing for the merit system in the various departments was brought forward by him and barely failed of enactment. Thenceforward, though taking an active part in public affairs, he never held nor was he a candidate for any political office. He was a member of the American Bar Association, the Chicago Bar Association, to the presidency of which he was elected in 1891, the Illinois Bar Association, of which he was president in 1896-7, and of many clubs and societies. In 1895 he was elected president of the Union League Club, and also served terms as president of the Chicago Law Club and of the Chicago Law Institute.

His practice was large and varied. In the important litigation involving the lands within the city of Chicago bordering upon Lake Michigan, and owned or claimed by the Illinois Central Railroad, Mr. Hamline represented the State of Illinois. While president of the Bar Association of Illinois he was active in procuring the consolidation of the Supreme Court, which had been until that time ambulatory. In 1894 he served as one of a board of three members appointed by the Mayor of Chicago to introduce the merit system into the police department of that city.

Mr. Hamline was married to Josephine Mead, whom, with two children, Josephine V. and John H. Hamline, Jr., he left surviving him.

In the lines imprinted on the first page of his pamphlet on the "Mueller Bill," and published during the last few days of his life, he gave the key to his life:

"Oh, Neptune, you may save me if you will; you may sink me if you will, but whatever happens, I shall keep my rudder true."

### JOHN NELSON JEWETT.

John Nelson Jewett, for many years a leader of the Chicago Bar, died at his home in that city January 14, 1904. He was born at Palmyra, Maine, October 8, 1827. When he was eighteen his father moved to the West, establishing his home near Madison, Wisconsin. A year later he entered Bowdoin College as a sophomore, receiving the degree of A.B. in 1850. He then taught school in Maine for two years, pursuing at the same time the study of the law. He then returned to Madison, where he was admitted to the Bar early in 1853, and in the same year to the Bar of Illinois, when he removed to Galena and began practice there.

In 1856 he came to Chicago, where he thereafter resided up to the time of his death, a conspicuous figure in the social and professional life of that city.

He was associated in partnerships with various lawyers of eminence during his long professional career, but at the time of his death was practicing alone.

He married Miss Ellen Rountree, daughter of John H. Rountree, of Platteville, Wisconsin, and had two sons, one of whom, together with Mrs. Jewett, survive him.

Mr. Jewett served one term in the state senate, beginning in January, 1871. He was one of the founders of the Chicago Bar Association and its president in 1877. At the time of his death he was president of the Chicago Historical Society and dean of the John Marshall Law School of Chicago.

Mr. Jewett was a lawyer of unblemished character, high standards and extensive attainments. He had an extended experience not only in the courts of his state, but in the federal courts and in the Supreme Court of the United States; and he enjoyed in a high degree not only the confidence and

esteem of the courts where he practiced and of the Bar, but that of the people of his city and state as well.

## IOWA.

### JOHN J. McCARTHY.

John J. McCarthy, one of Dubuque's most honored and esteemed citizens and of Iowa's most prominent and successful attorneys, died of typhoid fever at his home in Dubuque, Iowa, on September 4, 1904.

Mr. McCarthy was born in Clayton County, Iowa, on April 27, 1859. He received his education in the State University of Iowa, and came to Dubuque in 1883 to engage in the practice of his profession. His success was steady and brilliant. He became a factor in the democratic party and served as city attorney for several years.

His fame as a successful practitioner at the Bar was not confined to the limits of the city, and his election to the presidency of the Iowa State Bar Association in July, 1900, was a deserved tribute to his ability as a lawyer and to his standing among his brethren of the profession. While he was president of that Association he delivered an address on the subject of "Perjury in Judicial Proceedings," which caused national comment.

Despising craft and cunning, Mr. McCarthy tried his cases on a high plane; deeply sensible of the dignity of his profession, he personified that dignity; solicitous for the integrity of the court system, he subordinated consideration of the individual to the imperative necessity of safeguarding justice; he was not alone the attorney of his client, but an officer of the court, and as such, an agent bound by oath and honor to execute a sacred duty.

Twenty years a lawyer at the Dubuque Bar, Mr. McCarthy died at forty-five, a leader in his profession at home and in the state.

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## LOUISIANA.

## ERNEST J. WENCK.

Ernest J. Wenck, the Nestor of the New Orleans Bar, died in that city on January 29, 1905, at the ripe age of eighty-nine years. He had for over fifty years been an active practitioner in the courts of Louisiana, remaining such until a few weeks before his death.

He was born in the town of Basle, Canton Basle, Switzerland, and in all the stages of his life he manifested in his character and individuality the traits of that primitively pure, upright and uncorrupted people, simple without weakness, honest without pretense, brave without ostentation.

Not only was he the oldest member of the Louisiana Bar in point of age, but with two exceptions he was the oldest in date of admission to practice. The memorial presented by the Louisiana Bar Association through a committee thereof, to the Supreme Court, so fully described the deceased that it is found not out of place to incorporate it here :

“ All of us, for a time so long that we have ceased to count the years, have known him and met him about the court rooms, always the same sturdy, plain, stalwart figure that seemed endowed with some hidden power which defied the inroads of time and resisted the movements of change. The oldest of us in years and practice, with few exceptions, found him forty-five years ago a middle-aged man in full and lucrative practice, enjoying the benefits and the honors of an extensive clientele. And he has come down the years with us while the young have grown old and the old have passed away, sustaining always the pillars of an honorable life, fidelity and devotion in every trust reposed in him. In the performance of a duty of love like this, it is difficult to avoid the exaggeration of idle praise, the vanity of panegyric. Let there be nothing of that ; let the record be simple as the life it is intended to commemorate. He enjoyed to the last the respects of the courts, the love and esteem of his brother lawyers and the confidence of his clients.

“ He was not a profound jurist, nor in the academic sense of the word a learned scholar, but in the ordinary demands of practice, a good lawyer for his cases and a faithful friend to

his clients; in all the duties and relations of life as man, as citizen, as lawyer, full of the sense of right, and strong in the energy to make it prevail.

“He was totally free from all vanity, sham or pretense; open as nature, true as the light, sturdy as the oak. He lived in the summit of what Wagner calls the realization of the simple life, forgetfulness of self and charitableness towards all. Herein lay the secret of his success and the key to the power with which he maintained it for so many years. He held his friends by the warmth of his sympathies and the genuineness of his convictions.

“In temperament he was favored beyond the average. The bright side of things was always on top for him, the gods of contentment and good fellowship must have presided over his birth. He was generous, charitable, self-sacrificing; he was never happier than when he communicated happiness to others. We might follow him into his daily life and record how those noble tendencies were manifested in works of charity and beneficent service, but let it suffice that we place on record our testimonial to these virtues of our lamented brother; that we render tribute to the generous manhood which illumined his character and to his honorable career as a lawyer, distinguished for such zeal and fidelity as the best might emulate and none can surpass.

“Let us cherish the memory of these virtues as guiding stars in the spheres of our best aspirations. Let, from this example, the aged take courage to walk bravely on to the end and the young to consecrate themselves to the resolve for higher and greater achievement. So only shall nothing be lost to God or to man; so shall the good which yearned and toiled and aspired in the heart of the departed transmit its fervor to the living and keep aglow forever and forever the redeeming mystery of love and hope; and so only shall the living above all other meed honor the dead.”

The Chief Justice of the state added the appreciation of the Bench to the words of the Bar and fittingly described the loss of all through the death of an eminent member of the legal profession.

## MAINE

## JOHN A. PETERS.

John A. Peters, ex-Chief Justice of the Supreme Judicial Court of Maine, died in Bangor, April 3, 1904, at the age of eighty-one.

He was born in Ellsworth, Maine, October 9, 1822, and after an academic training in Maine was graduated at Yale in 1842. He was afterwards a law student at Harvard, and was admitted to the Bar, in Hancock County, Maine, in 1844. In the same year he removed to Bangor, where his remaining life was spent, and engaged at once in the active practice of his profession.

He became early interested in politics, and was a member of the Maine Senate in 1862-3, and of the Maine House of Representatives in 1864. From 1864 to 1866 inclusive he was attorney-general of Maine, and from 1866 to 1872 he served three terms in the lower house of Congress. In 1873 he was first appointed an associate justice of the Supreme Judicial Court of Maine, and served in that capacity till 1883, when he was appointed chief justice of that court, which distinguished office he held by successive reappointments till the close of 1899, when he sent his resignation to the governor, to take effect on the first day of January, 1900. He received the degree of LL.D. from Colby University in 1884, from Bowdoin College in 1885 and from Yale in 1893. His entire services on the bench cover the unusual period of twenty-six years. After his resignation his declining years were spent in retirement and in the society of family and friends.

He was immensely popular with old and young alike. His great natural ability, his deep learning in the law, his fairness and dignity on the bench, and, what is best remembered by people generally, his never-failing courtesy and overflowing wit and good humor—all these made him conspicuous and admired among all the lawyers and jurists of Maine.

Chief Justice Peters stood apart from other men as a man of unique mold. He quickly made his mark in his profession, his trial of causes being marked by keen perception, fertility of resource, persuasiveness of oratory, and, above all, a certain fascination of personality which made him a formidable antagonist. His putting of a legal proposition was at once compact and luminous, while his wit, which became proverbial, was as full of meat as of brilliancy. His unaffected kindliness and humor attracted all who knew him, while his friendships were strong and deep.

As a judge, he had an inherent love of justice, and all suitors before him, whether they won or lost, felt the absolute integrity of his mind. His opinions were models of pithy and convincing statement, and his demeanor towards the Bar was always of kindly courtesy. The audacity of his wit will be long remembered in Maine and by his contemporaries in the halls of Congress, and to all who knew him in any walk of life he had a most attractive personality.

## MARYLAND.

### LLOYD LOWNDES.

Lloyd Lowndes was born in Clarksburg, West Virginia, on February 21, 1845, the son of Lloyd and Maria Moore Lowndes. His father was a successful merchant, who had by strict attention to business, and by a very marked commercial ability, amassed a fortune very considerable for that time and place. This ability was transmitted to his son, together with a taste and aptitude for public affairs, which came down from more remote ancestors, two of whom were early governors of Maryland. The family had its seat in England at Bostock House, Cheshire, and was one of position and distinction.

Lloyd Lowndes was destined for the Bar and was carefully educated for that career. His general education was commenced at the academy in Clarksburg, continued at Washing-

ton College, Pennsylvania, and completed at Allegheny College, Meadville, Pennsylvania, where he was graduated with distinction at the age of twenty years. He then took up the study of law in the office of Richard L. Ashhurst, of Philadelphia, attending the law school of the University of Pennsylvania, and finishing his course in 1867. He immediately took up his residence in Cumberland, Maryland, and soon built up a good practice there, which promised him success and prominence in that field. His early taste for public affairs, however, soon led him into politics, and he was made a candidate for Congress by the republican party and elected in 1872, the youngest member of the Forty-third Congress. From that time his growing business interests drew him away from the law, and he never practiced actively again, devoting himself to banking, coal mining and commercial pursuits and to public life. But he never lost his interest in the law nor in lawyers, and maintained to the last his membership in his local Bar Association and in the American Bar Association, having been elected president of the former even after he had withdrawn from active practice. His knowledge of the law stood him in good stead during his business life and afterwards while he was governor of his state.

His congressional life lasted but one term, but he showed his independence by voting against the civil rights bill, although coming from a constituency in which there was a large colored vote, and he was a useful and active member. This vote, as he anticipated, caused his defeat in his second candidacy for Congress, and he returned to private life.

After an active and varied business life of some years, during which he was eminently successful as the head of large financial and mining interests, extending their operations throughout the state, he was nominated by his party as candidate for governor in 1895. He had always taken an active interest in politics, and his acquaintance was a wide one. A very excellent campaigner, although making only simple, direct speeches, with no attempt at oratory, he increased the



confidence which the people already had in him and was elected governor by a majority of over 18,000, the first successful republican candidate since the civil war. His administration was marked by high ideals and by clean, business methods in attaining them, and by a strict adherence to pre-election pledges. These pledges included, among many other minor matters, a new charter for Baltimore city, a new and non-partisan election law for the state, a new assessment law, all of which were enacted. The fact that his party had been so long out of power caused unusual difficulties for the executive, and the political rancor was increased by two elections for United States Senator during his term. So, although it was admitted that his services had been very great, and his term as governor a distinguished one, internal dissensions in his own party and the return to their party fealty of many independent democrats, who deemed that the power of the old leaders of their party had been broken, and that by reason of Governor Lowndes's election and services as governor there was no further danger of a return to old conditions, caused his defeat when renominated in 1899.

Upon his retirement he took up again his business interests, which he prosecuted with his usual vigor until his death. The bank of which he was president, and in which he owned the controlling interest, became during his presidency of thirty-two years the first upon the roll of honor of national banks in the state. He still took an active interest in politics and public affairs, and was an acknowledged leader in the state, although he never again became a candidate for public office.

In private and public life alike, Governor Lowndes was a man of attractive personality and kindly and genial disposition. He married in 1869 Miss Elizabeth T. Lowndes, who survives him, with five sons and one daughter. His home life was ideally happy.

He was a member of the Episcopal Church, and for thirty-two years a member of the vestry and senior warden of Emmanuel Church, Cumberland. His gifts to his church

were generous and constant, and he served frequently as a delegate to its state and general conventions. He was a member of many social and charitable organizations. His whole life was marked by a strict adherence to high principles of conduct and by devotion to duty. His influence upon the political life of Maryland was very strong and always for good. He died very suddenly at his home in Cumberland on January 8, 1905.

## MASSACHUSETTS.

### JOHN WILLIAM CORCORAN.

John William Corcoran, of Clinton, Massachusetts, formerly associate justice of the Superior Court of Massachusetts, was born in Batavia, New York, June 14, 1853, and was the son of James P. Corcoran and Catherine Donnelly Corcoran. Shortly after his birth, the family returned to their former home in Clinton, and Mr. Corcoran received his preliminary education in the public schools of that town. He pursued his collegiate studies at Holy Cross College, Worcester, and at St. John's University, Fordham, New York, leaving the latter institution in his senior year on account of the death of his parents. He was graduated from the Boston University Law School with the degree of LL. B., and admitted to the Worcester Bar in June, 1875. He at once opened an office in Clinton. Later he was the senior member of the firm of Corcoran & Parker. In 1889 Mr. Corcoran opened an office in Boston.

On May 20, 1886, during President Cleveland's administration, he was appointed receiver of the Lancaster National Bank, of Clinton, and very successfully wound up the institution.

Judge Corcoran was a man of marked legal and judicial ability, and for several years was one of the foremost members of the Suffolk Bar. Endowed with a strong individuality and

possessing unusual power in argument, he was at his best before a court and jury. His broad and intimate knowledge of the law, his skill in examining witnesses, his ability as an orator, and his remarkable industry and perseverance were recognized and admired. In his practice he gave special attention to business and corporation matters. He was an active and influential factor in the offices of the town of Clinton, and in the councils of the democratic party, of which he was long a valued leader. He served for thirty years as a member of the school committee, most of the time as its chairman. For twenty years he was a member of the Board of Water Commissioners, serving as chairman, secretary or treasurer from its inception. He was chiefly instrumental in securing for Clinton its present water supply, and probably did more than any one man in formulating the plans which resulted in the construction of the works. For ten years he was town solicitor and was afterward the town's legislative agent.

In the political affairs of the commonwealth, Judge Corcoran was especially active. He was the democratic candidate for district attorney of Worcester County in 1883 and 1884, for attorney-general of Massachusetts in 1886 and 1887, and for lieutenant-governor, with William E. Russell at the head of the ticket in 1888, 1889, 1890, 1891. In 1891 and 1892 he was judge-advocate-general on Governor Russell's staff, resigning in the latter year when he was appointed by the governor an associate justice of the Massachusetts Superior Court. He conducted the business of his court with great credit to himself and to the satisfaction of the Bar. This position he filled with great ability until November, 1893, when he resigned in order to resume private practice.

In 1893, he was chairman of the Massachusetts Board of Managers of the World's Columbian Exposition at Chicago, and rendered valuable service there in looking after the interests of his commonwealth. He was a member of the democratic state committee from 1882 to 1892, and its chairman from 1890 to 1892 and served until he resigned in 1896. He

was a delegate to the National Democratic Convention of 1884 from the old ninth Massachusetts congressional district; was unanimously elected a delegate from the same district in 1888 and acted as chairman of the Massachusetts delegation; was elected a delegate-at-large for Massachusetts in 1892, receiving the largest vote, but did not go on account of his appointment to the bench; and was a delegate and again chairman of the Massachusetts delegation to the convention at Chicago in 1896. He was the democratic candidate from his district for representation to the General Court in 1887, for State Senator in 1880 and for Clerk of Courts of Worcester County in 1881.

On June 21, 1893, St. John's University at Fordham, New York, recognized his learning and eminence by conferring upon him the honorary degree of LL. D., and in 1896 he received the same degree from Georgetown (District of Columbia) College. In 1899 Holy Cross College conferred another LL. D.

He was married at Jamaica Plain the 28th of April, 1881, to Miss Margaret J. McDonald, daughter of Patrick and Mary McDonald, and left three children. He died August 4, 1904.

## MINNESOTA.

### JOHN B. SANBORN.

John B. Sanborn was born at Epsom, New Hampshire, December 5, 1826, on the farm which for more than one hundred and fifty years has been in the continuous possession of the Sanborn family. His earliest ambition was to become a farmer, but later he chose the law, several years after he had passed his majority. At the age of twenty-three he began his preparation for college at Pembroke Academy, New Hampshire, and completed it two years later at Thetford Academy, Vermont. He entered Dartmouth College at twenty-five, but remained less than a year, when his college work was forever

discontinued. He began the study of law at Concord, New Hampshire, in 1852, and was admitted to the Bar there in 1854, immediately opening an office, which he maintained for but a few months, when he removed to St. Paul. He arrived in that city December 21, 1854, and practiced there continuously until 1862, when he entered into the military service of his country, continuing therein until 1866. From that year until 1878 he practiced in Washington, District of Columbia, and in St. Paul, in which latter place he continued practice until his death, May 16, 1904.

During his practice in Minnesota he was the senior member in several leading firms, and throughout nearly a half-century of professional work he displayed a conscientious regard for the rights of clients and a high sense of honor in his relations with courts and the Bar. He labored in many fields, and the uniform excellence of his work testifies to the wealth of his mental gifts. While highest praise was due him as a lawyer, his career as a soldier was important. He was adjutant-general and acting quartermaster-general, State of Minnesota, with the rank of brigadier-general, April 22, 1861, to January 1, 1862; colonel Fourth Minnesota Volunteer Infantry November 5, 1861, to August 4, 1863; commissioned as brigadier-general United States Volunteers December 15, 1862, for conspicuous gallantry and efficiency at the battle of Iuka; commission expired by limitation March 4, 1863; reappointed brigadier-general of Volunteers August 4, 1863, for conspicuous gallantry and efficiency in the campaign against Vicksburg; brevet major-general United States Volunteers February 10, 1865, for gallant and meritorious services in the campaign in Missouri against General Price and his army; mustered out of military service May 31, 1866.

Coming to Minnesota in the infancy of the commonwealth, he bore a conspicuous part in its founding, serving many terms in both house and senate, beginning as early as 1859 and ending as recently as 1893.

He was the first commander of the Minnesota Department of the Grand Army of the Republic, and a charter member of the Loyal Legion of that state, being twice elected its commander. He was an active, influential member of the St. Paul Chamber of Commerce, and for many years a member and, at the time of his death, the president of the Minnesota Historical Society.

In 1857 General Sanborn was married to Miss Catherine Hall, of Newton, New Jersey, who died in 1860. In 1865 he married Miss Anna Nixon, of Bridgeton, New Jersey, who died in 1878. In 1880 he married Miss Rachel Rice, of St. Paul, who, with her four children, survive him.

#### HIRAM F. STEVENS.

Hiram F. Stevens was born in St. Albans, Vermont, September 11, 1852. He was a son of Hiram Fairchild Stevens, sometime president of the Vermont State Medical Association, an army surgeon during the Civil War, and a member of both houses of the legislature. He prepared for college at Kimball Union Academy, Meriden, New Hampshire, and was a member of the class of '72 of the University of Vermont. He went to New York city and read in the law offices of Porter, Lowrey, Soren & Stone, being graduated from Columbia Law School in 1874 and admitted to the Vermont Bar during the same year. In 1876 he was married to Miss Laura A. Clary, of Massena, New York, who survives him. In 1879 he removed to St. Paul, Minnesota. His genial, kindly disposition and alert, industrious habits were such that he soon became well known in the city of his residence. The activity of Mr. Stevens's temperament amounted almost to restlessness. His intelligence was of the most alert quality. He devoted himself with unusual singleness of purpose to the law in its sources and in all its branches. He was at all times most earnest and diligent for everything that tended towards the higher culture and well-being of lawyers as a whole. He was one of the most active and enthusiastic members of the State Bar

Association, being its first secretary, and its president in 1901. He had also served as president of the St. Paul Bar Association. He was one of the organizers of the St. Paul College of Law, and its dean at the time of his death. From 1892 to 1900 he was lecturer on the Law of Real Property in the School of Law of the University of Minnesota. He was a member of the Association of American Law Schools, chairman of the General Council of the American Bar Association, and member of the International Law Association. In 1901 he was appointed by the Justices of the Supreme Court of Minnesota chairman of the commission appointed for the revision of the statutes, and to the duties of that position he devoted his zealous labors until his death on March 9, 1904.

He was a fluent and gifted speaker, and was called upon to deliver orations and political and other addresses on many occasions of moment. He was one of the managers of the Minnesota Society of the Sons of the Revolution, member of the Academy of Political and Social Science and of the Minnesota Historical Society. He was a leading member of the Chamber of Commerce of St. Paul and of the principal clubs there, and was chairman of the Board of Park Commissioners of that city in 1886. He was a member of the Minnesota Society of New York, of the Odd Fellows, Knights of Pythias, the Sons of Veterans, and Free Masons, being a member of the Grand Lodge of Vermont, and he was at one time prelate of Damascus Commandery, Knights Templars, St. Paul. He was among the most active in the laity of the Episcopal Church in Minnesota, being prominent in all church councils, and a vestryman in his church, St. Paul's. He served in both houses of the legislature, and his industry and ability enabled him to hold important chairmanships. After the year 1900 he sought no further political preferment, though ever ready to aid the republican cause, which he espoused. In 1902 the University of Vermont conferred upon him the degree of LL.D. The mere record of his activities shows more clearly than any words of eulogy the loss that his profession and his friends

have suffered by his death. His disposition was most kindly; his sympathies broad. No intolerance or peevishness ever marred his intercourse with his fellow members of the Bar. He had no gloomy self-consciousness, but was cheerful and helpful to those about him.

## MISSOURI.

### EDWARD CUNNINGHAM, JR.

Edward Cunningham, Jr., was born in Cumberland County, Virginia, on the 21st day of August, 1841. His father was Edward Cunningham, and his mother Catherine I. (Miller) Cunningham, both of old Virginia stock. He attended school at the Virginia Military Institute at Lexington, Virginia, where he was graduated in 1860. At the outbreak of the Civil War, being then but nineteen years of age, he occupied the position of assistant professor of engineering in the same institution, which was then under the superintendence of Major Thomas J. Jackson, afterwards known to fame as Stonewall Jackson. When the call for troops was urgent, the cadets of the Virginia Military Institute and their instructors were at once assigned to duty. Mr. Cunningham was selected by Major Jackson (who then received his appointment as colonel in command of the Northern Department of Virginia) as adjutant-general on his staff.

He saw much active service throughout the war, serving faithfully and valiantly. In June, 1864, he was made major of artillery for service with the volunteers, and became General Smith's chief of artillery of the Trans-Mississippi Department. In that capacity he served until the close of the war in 1865.

Major Cunningham returned to his native state, Virginia, and received an appointment as professor in the Norwood School in Nelson County, where he served two years.

From 1867 to 1872 he not only taught school and served as professor of physics and astronomy in the Louisiana State



University, but at the same time studied law, to which profession his inclination clearly turned.

He came to St. Louis in 1873, and was admitted to the Bar in April of that year.

Major Cunningham made rapid advancement in his profession and in acquaintance and standing. He practiced in St. Louis alone until 1887, when he formed his first law partnership with Edward C. Eliot, of the St. Louis Bar. The firm of Cunningham & Eliot so constituted continued in existence until 1891, when it united with the then existing firm of Phillips & Stewart to form the firm of Phillips, Stewart, Cunningham & Eliot. By the death of the senior member of that firm, Judge J. W. Phillips, in 1896, the firm was continued as Stewart, Cunningham & Eliot, and was dissolved by the death of Major Cunningham on the 18th day of October, 1904.

During the thirty-one years of his practice in St. Louis Major Cunningham enjoyed the benefits of a large and desirable clientage. He was never desirous of place or position, and he had almost an aversion to political preferment. There were many instances in his life when he was sought for judicial honors. These he declined. At the same time it was a part of his character not to refuse any publicly bestowed duty. In place of accepting the honors and emoluments of office, Major Cunningham gave willingly and gratuitously a large part of his time to public objects. He was deeply interested in civil service reform and the principles which were represented by it. He was for many years a member of the executive committee of the Civil Service Reform Association of Missouri, and in 1898 was its president. He took earnest part in the Confederate organizations in St. Louis. In 1892 he was president of the St. Louis Bar Association.

In politics Major Cunningham was a democrat of independent tendencies. He did his own thinking, and his views were always based upon conviction respecting principles and inquiry respecting men. In the campaign of 1896, because

of his bold and intelligently expressed views respecting the gold issue, he was selected as chairman of the State Democratic Committee on behalf of Palmer and Buckner, the candidates of the gold democracy. His love of law and order, and his strong conviction of the duty of citizens to support the law, prompted him in 1900 during the street car strike to organize a volunteer company of men to aid the authorities in maintaining order. In the short space of ten days he had formed a company, composed largely of lawyers and their friends, efficiently drilled and effective for its purposes. He at once commanded respect and admiration for the prompt and determined service rendered. In the last year of his life, Major Cunningham took an active interest in prosecutions intended to preserve the purity of the ballot at elections.

Major Cunningham was married on December 21, 1876, to Miss Cornelia Thornton, of Louisiana, a sister of Judge J. Randolph Thornton, of Alexandria, Louisiana. Two children were born, one of whom died in infancy, and the other, Edward Thornton, died in his fifteenth year in 1901. Mrs. Cunningham died in 1903, never having recovered from the mental shock of that event.

Major Cunningham's health was not robust and he spent the summer of 1904 abroad, returning in September apparently vigorous and youthful. But on the 17th of October he was seized with a sudden and serious malady from which he died the following day.

Major Cunningham was of an unusually pleasing and interesting personality. He was quick and graceful in his movements. In his temperament he was even and placid. His personal address was pleasing and gave the impression of an open and candid and honest heart. Earnestness, sincerity and courage were the most marked characteristics of his nature. No one who associated with him any length of time could fail to be impressed with a deep respect for his inherent sincerity and honesty, or could fail to form for him a warm attachment. He had a humorous vein and a rich fund of

anecdotes, which he would use in his conversation in the happiest way. In his opinion and estimate of men he was generous and charitable. In his views on every subject he was firm and positive. There was no uncertainty about him, and one knew exactly where to locate him on every question. While judicious, he had the courage of his convictions. The temperament of his mind was calm and judicial. His delivery as a speaker was deliberate, conforming with his mental processes, which were logical and accurate, rather than brilliant and effusive. He took a firm and comprehensive grasp of every subject, and dealt with it with such clearness that he was an interesting speaker. There was nothing in his manner or thought which appealed to passion or prejudice. He had the natural gift of rectitude, and was incapable in the practice of his profession or in any other field of activity of deceit or duplicity, and he hated it in others. His fidelity to his clients was unswerving, and his industry on their behalf was unflagging. There was no sacrifice too great to make for them. As a lawyer, as well as in every other capacity, his life was animated by the highest purposes.

## NEBRASKA.

### CHARLES OGDEN.

Charles Ogden died at Omaha, Nebraska, on the 25th of January, 1904, at the age of forty-eight.

He was born at New Orleans, Louisiana, where he was educated and grew to manhood. His father was a New Englander by birth, but for many years was a citizen of New Orleans, engaged there in mercantile pursuits. His mother was of French extraction, and at his home he himself and his brothers and sisters were taught to speak the French language before they knew English. Immediately after being admitted to the Bar in his native city at the age of twenty-one he went to Omaha, and entered upon the practice of the law.

He devoted his entire time and energies to his profession, and never turned aside in the pursuit of any commercial interests. His keen perception of right, his intuitions of natural justice, supplemented by great legal learning, gave him a high standing as a lawyer among his professional brethren.

Being deeply interested in social and economic affairs, he naturally took a leading part in the politics of his adopted state. He was always a staunch democrat. His ability as a political leader was early recognized, and in 1891 he was chairman of the Democratic State Central Committee and managed the campaign, resulting in the election of James E. Boyd, governor of the state, as its first democratic governor.

In the fall of 1892, there being a vacancy upon the district bench in the Fourth Judicial District, Governor Boyd appointed him a judge of the District Court to fill out an unexpired term. As a judge he fully met the expectations of his friends and compelled the respect of his political opponents. At the expiration of his judicial office he resumed the practice of the law.

On the morning of his death he was stricken with apoplexy at his office in the midst of his books, and was taken to his home unconscious. A very few hours thereafter he died.

He left a widow, but no children. His personality was most engaging, and his ideals of professional ethics were of the severest type. He had unbounded respect for the law, and firmly believed that to the legal profession, more than to any other, is intrusted the preservation of our republican institutions under a constitutional government.

## NEW JERSEY.

### SAMUEL H. GREY.

Samuel H. Grey was born in Camden, New Jersey, in 1836. He commenced the study of the law at the early age of seventeen, in the law offices of Abram Browning, and was admitted

to the Bar as an attorney in 1857 and as a counsellor in 1861. He was a successful prosecutor of Cape May County and soon became the recognized leader of the South Jersey Bar, traveling through the various counties at the circuits where yet his good stories at the taverns and his eloquence in the court room are traditionary. He was a member of the Constitutional Commission of 1873, and president of the Commission of 1894. His reputation, however, as a leader of the state Bar was not established until the famous impeachment trial of Patrick H. Lavery in 1886. He conducted the prosecution in that matter with such signal success that he at once assumed a state leadership, which he maintained until his death. The trial lasted a month and was presided over by Governor Griggs.

The reputation thus established was the cause of his being retained in many subsequent cases of importance. Among them may be mentioned *Paul vs. Gloucester*, where his argument on the power of the legislature to enact a local option law added to his fame, and *State vs. Wrightson* (27 Vroom 119), the case which upset the time-honored practice of electing members of the legislature by districts, and held that the constitution required their election by counties. In the famous controversy in 1894 over the organization of the state senate he made the closing argument. He was also successful in many cases of note at the circuit.

While serving on two occasions as a presidential elector, he studiously refrained from political life, although not without tempting offers of preferment in that field. He declined more judicial appointments than any other Jerseyman. Governor Abbett offered him a justiceship of the Supreme Court, Chancellor McGill a vice-chancellorship, and Governor Griggs the chief justiceship. He, however, preferred the Bar, with its contests and its victories, and wisely recognized that his temperament was more that of an advocate than a judge.

In 1897 Mr. Grey became the attorney-general of New Jersey. A vast amount of work was successfully and satisfactorily disposed of by him during the five years he performed

the duties of that office. There was, perhaps, but one case of special notoriety that he argued as attorney-general, the Bott Anti-Gambling Amendment case, in which Mr. Grey displayed his usual ability in discussing the constitutional question involved.

With his retirement from the office in 1902, on the expiration of his term, his active professional life terminated. Some affection of the heart had already weakened his physical powers and on one or two occasions caused him to pause in his work. He was finally stricken with apoplexy and died on the 7th of December, 1903.

Concerning his characteristics as a lawyer, one of his closest associates said of him :

“I thought he had the capacity to receive, properly relate and digest the essential incidents of a case, with a rapidity and certainty which I never saw excelled. His cross-examinations, when he was in active practice, were both acute and adroit. No witness was bullied or insulted, and very rarely was there any by-play to the jury. The witness, if unfavorable, was gently led into a position which exposed his partiality, his weakness or his falsehood, without exciting his alarm or resentment. In argument, especially in cases where the law and the facts were so intermixed that clear analysis of their interrelation was required, he was at his best.”

The closest observers of Mr. Grey's professional career received the impression that he was alert, well supplied with information, gathered perhaps more from experience than study, which was always ready for instant use. This faculty made him peculiarly valuable as counsel in the trial of causes wherein, without having made particular preparation, he was wedded to no special theory, and hence rose with the greatest facility to every emergency as if it had been anticipated. He was at his best perhaps as counsel in the preparation of an argument. Then he would discuss with fullness the case in all its bearings and give shrewd suggestions as to the plan of campaign. He had a high sense of professional duty, was a fair antagonist, stooped to no mean trick and

believed in trying a case on its merits. But, now that he is gone, it is perhaps, after all, not so much these qualities that we remember and like to recall as his genial warmth of friendship, his strong human nature, his fondness for the good things of life, his camaraderie, his hospitality, his fund of anecdote, in a word that robust manliness that made us all glad to clasp him by the hand, and proud to be able to do so.

## NEW YORK.

### WALTER STEUBEN CARTER.

Walter Steuben Carter, who died on June 3, 1904, was the senior member of the firm of Carter, Hughes, Rounds & Schurman, of New York city.

Eighth in descent from Elder William Brewster, of the "Mayflower," he was the son of Evits and Emma Taylor Carter, and was born at Barkhamsted, Connecticut, on February 24, 1833. He was educated in the district schools and was admitted to the Bar at Middletown, Connecticut, in 1855. In 1856 he was elected a member of the Board of Education and for a time edited one of the newspapers in Middletown. In 1858 he removed to Milwaukee, Wisconsin, where he formed a law partnership with William G. Whipple (now United States district attorney for the Eastern District of Arkansas), under the firm name of Carter & Whipple. This firm was succeeded by that of Carter, Pitkin & Davis, in which Mr. Carter's partners were Frederick W. Pitkin (afterwards governor of Colorado) and DeWitt Davis. He compiled the Wisconsin Code of Procedure (1859), was a United States commissioner and master in chancery (1859-1862) and a trustee of Lawrence University (1864-1865). A republican in politics, he managed the campaign which resulted in the first election of Matthew H. Carpenter to the United States Senate. During the civil war he was a member of the Christian Commission. In 1869 he removed to Chicago, where he formed

the firm of Carter, Becker & Dale, and in 1872 came to New York city as the representative of the Chicago creditors of the insurance companies which had failed because of the great fire. From that time he practiced in New York. After association with Leslie W. Russell (afterwards justice of the New York supreme court) in the firm of Carter & Russell, and with Major Sherburne B. Eaton (Carter & Eaton), he formed a partnership with Daniel H. Chamberlain (former governor of South Carolina), William B. Hornblower and Eugene H. Lewis, under the firm name of Chamberlain, Carter & Hornblower. This firm was succeeded by Carter, Hornblower & Byrne; Carter, Hughes & Cravath; Carter, Pinney & Kellogg; Carter, Hughes & Dwight, and his last firm, Carter, Hughes, Rounds & Schurman.

He married in 1855 Antoinette Smith, of New Hartford, Connecticut, who died in 1865. He had four children of this marriage, of whom a son and a daughter survive. In 1867 Mr. Carter married Mary Boyd Jones, of Frederick, Maryland, who died in 1869, and in 1870 he married Harriet Cook, of Chicago, who died in 1900. He had two sons of the last marriage, both of whom survive.

Mr. Carter was a man of marked individuality. He had an extraordinary memory. Names, dates and the countless unrelated facts and events which came under a cursory observation he recalled without effort. This faculty, added to a rare personal charm, gave him a wide acquaintance. It is probable that no other man knew so well the American Bar. His intimate knowledge of the careers of successful lawyers throughout the country was a cause of wonder to all who met him. He was a noted friend of law students and young lawyers. His advice and his assistance were always at their command. Though the extent and accuracy of his information on many topics were remarkable, he was not a student in the ordinary sense and he never sought professional eminence along the familiar lines. With great ambition, determination and resource he had a peculiar diffidence with reference to



many professional activities, and thus he was able and glad to give to others golden opportunities for work and for winning professional reputation in forensic efforts while he reserved for himself a more congenial field in meeting men and in the management of the office business. For many years his office was a training school for those who had already distinguished themselves in college and law school. The list of his associates (partners, clerks and students) is a notable one, comprising about eighty college graduates, among whom are many who are now eminent in the profession. In January, 1901, these graduates of Mr. Carter's office gave him a dinner at the University Club, in New York city, and the regard in which he was held was well voiced in the following words of a letter of congratulation from former Chief Judge Charles Andrews, of the New York Court of Appeals:

"I think there are few men in our profession who deserve to be held in more kindly remembrance by the young men than Mr. Carter. The sympathetic and active interest he has taken and the helpful aid he has always been willing to extend to them have been the inspiration and encouragement which have sustained many in the early struggles of their professional career. This list embraces many who subsequently occupied distinguished places in the profession."

And former Chief Justice Thomas Wilson, of Minnesota, wrote:

"For the unselfish interest which he has taken in young men and his never-ceasing efforts to help them, Mr. Carter deserves a patent of nobility."

Mr. Carter had varied interests. He was the only lay member of the American Guild of Organists. He was one of the incorporators of the Brooklyn Institute, and for eight years was president of its department of music. He was a trustee of Syracuse University. He organized and became president-general of the order of Settlers and Defenders of America, and was a member of the Society of Mayflower descendants, the Society of Colonial Wars, the Society of

Descendants of Colonial Governors, the Sons of the Revolution and other patriotic societies. He was also a patron of the fine arts and his collection of etchings and engravings was one of the largest and most carefully selected in the country.

### FRANCIS FORBES.

The death of Francis Forbes from pneumonia occurred on February 18, 1904, after an illness of but a few days.

Mr. Forbes was born at Kendall, near Rochester, New York, May 20, 1846. He entered Rochester University in the class of 1866, and, although his college course was interrupted by a short service in the army, he was graduated with his class and then spent a year in Europe, most of which was devoted to study at the College of France in Paris. Returning to New York, he entered Columbia Law School, from which he was graduated in the class of 1869.

After graduation, he entered the office of Evarts, Southmayd & Choate as a student, and later the office of Charles J. Wingate, as managing clerk; afterwards forming a business connection with the firm of Van Santvoord & Hauff, then leading patent attorneys of New York. In August, 1875, he associated himself in business with William H. Sage, under the firm name of Forbes & Sage, which partnership continued until February, 1884, and later with Charles H. Daniels, under the firm name of Forbes & Daniels; and in 1894 became senior partner in the firm of Forbes & Haviland, which partnership continued to the time of his death.

While Mr. Forbes always considered himself a general practitioner in law, it was in the field of trade-mark law that he attained his greatest distinction. To this subject he gave early attention, in 1877 preparing a "Digest of French Decisions," as a supplement to "Coddington's Digest of Trade-Marks," and, in 1880, preparing a compilation of the trade-mark laws of the United States, France, Great Britain, Germany and other countries. His interest in trade-mark law,

and his activity in the cause of international trade-mark conventions, and the reform of the patent and trade-mark laws of this country, continued until the time of his death.

As early as 1878 Mr. Forbes attended and took part in a conference held in connection with the international exposition of that year at Paris, which resulted in a convention composed of the representatives of several countries looking towards an international agreement for the registration of trade-marks by the citizens of the several adhering states in the other states. At the conference held under this convention at Madrid in 1890 the United States was represented by its minister to Spain, Thomas W. Putnam, and by Mr. Forbes and F. A. Seeley, at that time an officer of the United States Patent Office. Mr. Forbes attended this convention and took an active part in the debates, and subsequently represented the United States at a convention in Brussels in 1897, Bellamy Storer, United States Minister to Belgium, being the other delegate.

Mr. Forbes's activity in this line of work, however, did not cease here. In 1898 an act was passed by Congress authorizing the appointment of a commission to revise the laws relating to patents, trade and other marks and trade and commercial names, under which Mr. Forbes, together with Judge Grosscup, of Illinois, and Arthur P. Greeley, assistant commissioner of patents, were appointed commissioners, and their report, made to Congress in 1900, furnishes a very exhaustive compilation of all of the statutes, treaties and conventions relating to patents and trade-marks, and of the laws of foreign countries relating thereto, as well as valuable suggestions for legislation upon these subjects.

At the time of his death he was chairman of the Committee of the American Bar Association on Industrial Property and International Negotiations.

On first going to New York he became intimately and actively engaged in the affairs of the Young Men's Christian Association, and was a member and trustee of the Fifth Avenue

Presbyterian Church at the time of his death, and for many years prior thereto he exerted a strong influence upon the religious interests of the community.

As a member and secretary of the Committee of Political Reform of the Union League Club, and later as a delegate to the New York Constitutional Convention of 1894, although never a politician in the active sense, and always independent in his political views and principles, he rendered active service to the cause of political reform.

In 1882 Mr. Forbes married Miss Emma J. Bonner, a daughter of the late Robert Bonner, who with two sons and two daughters survive him.

### JAMES LINDSAY GORDON.

James Lindsay Gordon, son of George Loyall and Mary Long (Daniel) Gordon, of Louisa County, Virginia, and grandson of General William F. Gordon, of Albemarle County, died suddenly, at his home in New York city, on November 29, 1904. He was by descent Scotch-Irish, of Colonial-American ancestry and parentage.

Studying that he might be fit in the activities of life, choosing the law to gain wide opportunity, and entering upon a political career that he might strongly influence those about him, James Lindsay Gordon pursued courses of study at the private school of H. W. Jones, at Charlottesville, Virginia, at the College of William and Mary, and at the University of Virginia; and read law with Judge William J. Robertson and Mason Gordon. In 1881 he opened an office in Charlottesville; in 1886 entered the Virginia Senate, serving three terms, and declining renomination, returned in 1889 to private practice.

In 1893 Mr. Gordon removed his office to the city of New York, soon making his presence felt. As assistant district attorney, and assistant corporation counsel entrusted with the trial of causes at *nisi prius*, on the political platform and in

the party council, before social gatherings and among friends, he won recognition and fame as an orator richly endowed by nature with the gift of eloquence, a logician and scholar well trained and fitted for the statement and elucidation of the truth, and as a man of high instinct and charming personality.

### MYER S. ISAACS.

Myer S. Isaacs, the eldest son of Rev. Samuel M. Isaacs, was born in New York city May 8, 1841, and died there May 24, 1904, aged sixty-three years. After being graduated at the New York University in 1859, and studying law in the University Law School and in the office of John H. and Samuel Riker, he was admitted to the Bar in 1861. In 1873 he and the late Adolph L. Sanger became partners under the firm name of Isaacs & Sanger, which a few years later became and has since continued as M. S. & I. S. Isaacs. He was lecturer on real estate law in the law school of the New York University from 1887 until 1897. - In 1880 he was appointed by Governor Cornell a justice of the Marine (now the City) Court of New York to fill a vacancy, and was the candidate of the republican party for the same office for the ensuing term. He was also nominated for judge of the Superior Court in 1891 and for justice of the Supreme Court in 1895 by his party, in each election running ahead of his ticket. He served on the executive committee of the Republican Club and of the Bar Association of the city of New York, and had been a member of the latter since 1872.

Judge Isaacs, though having a general practice, attained especial pre-eminence in the law of real property and of equity, and he became one of the leading members of the real estate Bar of the metropolis. He was one of the founders of the Lawyers' Title Insurance Company and the Lawyers' Mortgage Company of New York, and was one of the original committee of fifteen counsel selected by the Lawyers' Title Insurance Company to pass upon all questions of title submitted to

the Association. He served on this committee from the formation of the company in 1887 until the very day of his death. This committee was composed of members of the New York Bar, especially prominent as real estate practitioners, and their decisions have been generally sustained by the courts and were regarded with great confidence by the metropolitan Bar, and in this committee Judge Isaacs took a prominent and leading part.

He took an active interest in municipal reform agitation generally, and in all civic movements tending to the betterment of conditions in New York city, and was one of the committee of fifty-three that urged the reform legislation in 1884. He gave very largely of his time and efforts to charitable and communal work of an extensive and varied character, and was ever ready to labor for the advancement of any cause that told for the betterment of his fellows, especially in the educational uplifting and the social elevation and Americanization of the immigrants of his own faith. He took an active part in the management of important trusts, and was president of the Baron de Hirsch Fund from its organization.

He was ever active in originating and urging remedial and reform legislation, and a number of important acts tending to the simplification of titles and the avoidance of real estate litigation were either originated by him or became laws largely through his efforts. One of the laws which was drafted by him was the amendment of section 1499 of the New York Code of Civil Procedure, which became a law in 1898, limiting the remedy in ejectment and for damages where the property consists of a strip of land not over six inches in width upon which stands in part the exterior wall of an abutting building. This act alone has saved a great deal of litigation and unsettling of titles in the large cities.

Judge Isaacs was a man who thoroughly understood himself. He had high ideals, and strove for them steadily and persistently. He was self-contained, calm and cautious, non-emotional, clear and concise in expression, and in action prompt

and decisive. He went straight to the point, which he was quick to see, as well as the proper remedy to overcome the difficulty. He was essentially practical, dignified and firm, genial and courteous in manner, and had a faculty of making and retaining friends, while at the same time the principles which guided his conduct in life were those which were creditable alike to his heart and his head. In association with others he generally became a leader. Those who knew him best appreciated him most.

#### ABNER McKINLEY.

Abner McKinley was born at Niles, Trumbull County, Ohio, on November 27, 1847, and died on June 11, 1904. His father was of Scotch-Irish and his mother of English descent, and from the sterling worth and careful instruction of these parents high ideals early filled the purposes of their son.

After completing a course in the public schools of his home and being graduated from Poland Academy, Abner McKinley, in 1868, commenced the study of law in the office of his elder brother, William McKinley. He was soon admitted to the Bar, and joined in forming the firm of W. & A. McKinley, at Canton, Ohio, destined for many years to remain the scene of his efforts. The senior partner of the firm attended exclusively to its trial work, and the subject of this sketch was long recognized as an able office lawyer of upright character and commendable industry.

In the later years of this period, Abner McKinley purchased a home at Somerset, and became interested in coal lands in that vicinity, realizing from them a considerable income, and took up the development of certain inventions.

Mr. McKinley established himself in the general practice of the law in the city of New York, taking interests in other inventions, and paying particular attention in his practice to matters involving corporate and financial interests, and enterprises of public and semi-public nature.

## ROSWELL A. PARMENTER.

In the death of Roswell A. Parmenter, on the 1st day of February, 1904, the Bar of Rensselaer County, New York, lost one of its foremost members.

Mr. Parmenter was born in Pittstown, New York, on the 20th of September, 1821. His boyhood was spent in work on his father's farm in summer and attending the district school in winter. Later he entered the Troy Conference Academy at Poultney, Vermont, from which institution he was graduated in 1846. He studied law in the office of Willard, Raymond & Woodbury, then a prominent firm in the city of Troy, and, after diligent and thorough study, was admitted to practice the year following. He formed a partnership with the late Judge Isaac McConihe, under the firm name of McConihe & Parmenter, which continued until Mr. Parmenter withdrew from the firm for the purpose of entering upon a partnership with his younger brother, Franklin J. Parmenter, under the firm name of R. A. & F. J. Parmenter.

This partnership was dissolved in 1874, and Mr. Parmenter continued to practice law without a partner until he became associated with the late Senator Smith, formerly of Smith, Fursman & Cowen, and this connection was severed only by the death of Mr. Smith. During the later years of his life Mr. Parmenter was alone in practice and, at the time of his death, was the oldest lawyer, in point of length of practice, in Rensselaer County.

Mr. Parmenter, during his long professional career, was an indefatigable worker. He was a lawyer of the old school. He was remarkably successful before a jury, and not less so before the appellate courts. With the former he had the art of placing before them, with consummate skill, the salient points in his case. He had that rare faculty of knowing and reading intuitively the character of the various members of the jury, and of being able to reach each one by apt reference and illustration.



With the appellate courts his clear, cold, convincing briefs and arguments, models of scientific construction and presentation, merited the close attention they invariably received. He was accurate and quick to discern a flaw in trial or appeal upon which a case could be carried up and won.

He was prominent not only in law, but in politics—a staunch democrat all his life. He served one term as state senator, and was his party's nominee for attorney-general in 1881, but failed of election with the rest of the democratic state ticket in that year. For two terms, from 1871 to 1883, and from 1886 to 1887, he was city attorney of the city of Troy, which office was later known as corporation counsel, and he had the distinction of being the first corporation counsel of that city. In 1894 he was a delegate to the constitutional convention, where his experience and wisdom were recognized and his counsel greatly sought.

His was a remarkable character, rarely moved to anger, undemonstrative to the point of apparent indifference, yet withal kind-hearted and charitable; honored and respected by all who knew him, and best beloved by those who knew him best.

## SEYMOUR DWIGHT THOMPSON.

[Abridged from the Proceedings of the Missouri Bar Association, 1904.]

Seymour Dwight Thompson, author, editor, judge, died at his home in East Orange, New Jersey, on August 11, 1904.

Judge Thompson was born in Will County, Illinois, September 18, 1842, the fourth son of Seymour and Betsy McKee Thompson. His father was a Presbyterian clergyman, a graduate of the Theological Seminary at Auburn, New York, who moved West, and migrating from place to place settled at Fayette County, Iowa. But the son was not long content there. The new country had few schools, and these were poor and scattering—he had learned to read by studying his father's tax receipts—and so he soon left home and turned his steps again towards Illinois, and for the next

six years he worked on the farm, attended school when he could, sometimes taught school himself for a term, and at other times carried a peddler's pack in the endeavor to earn a living. Then the Civil War broke out, and at eighteen he enlisted in the Third Iowa Regiment.

He was with his regiment in the battle of Shiloh, in the engagement at Matamora and at the siege of Vicksburg. In 1864 he published his first book, a history of the services of that regiment, a daily record and diary not only of the marches and services of the regiment, but the camp talk, the rumors and grumblings of the private soldier. Few of our war books record these phases of camp life with the details here found. During the last year of the war he had been detailed as judge-advocate, and thus acquired a leaning towards the legal profession. Mustered out on May 1, 1866, with the rank of captain, at Memphis, Tennessee, he found himself confronted with the problem of making a living, for he had married during his enlistment. He tried a number of things. For a time he was a patrolman; at another time he purchased a balloon and made some money sending it up from a vacant lot, with himself as aeronaut, and a carload of excursionists. But he finally secured a place in the office of the circuit clerk. He had read some law during his army life, and had carried first Blackstone, then Kent, then some other law text books in his knapsack during his campaign. His spare hours were now devoted to the study of law, and in 1869 he was admitted to the Memphis Bar.

His taste for investigation and writing brought him the acquaintance of publishers, and with Thomas M. Steger, of Nashville, he compiled and annotated the laws of Tennessee. This was his first attempt in the field of legal publication. A little later the idea of a collection of cases on self-defense being suggested to him by L. B. Horrigan, then district attorney of Memphis, he collected the cases and prepared the notes to what he entitled, although he had done all the work himself, "Horrigan and Thompson's Cases on Self-Defense." About

the same time he undertook the editing and publication of the decisions of the Supreme Court of Tennessee, which had been omitted from the authorized reports, the material consisting of notes of cases placed in his hands by J. B. Heiskell, afterwards attorney-general and reporter of Tennessee. A publisher undertook to print them for him, and set up and printed some three hundred pages of the first volume; but the printing office was in bad shape and poorly organized, and the mechanical errors in the work were so many that he refused to permit the book to be circulated and the sheets were destroyed, and all copies that could be found were called in. A very few got upon the market, wherefore this volume must be catalogued as one of those books which are the envy of book collectors on account of their rarity.

The Tennessee statutes, the cases on self-defense and the unreported Tennessee cases were published in St. Louis, and to facilitate the proof reading Thompson was induced by the publishers to leave Memphis and remove to that city. He did so in 1871, and for a couple of years, a stranger with few acquaintances, he supported his family on a meager income obtained from his literary work, struggling all the time to establish a practice at the Bar. Fortune, however, suddenly knocked at his door. In the fall of 1873, Judge John F. Dillon, then United States circuit judge for the eighth circuit, proposed to the St. Louis publishers, Soule, Thomas & Wentworth, the idea of issuing a law journal which should fill for the West the place filled by established periodicals in the eastern states. Willing to give this journal the advantages of his name and the benefit of his advice and guidance (his judicial labors prevented more), he inquired of the publishers if they could suggest a man who could do the real work of editing the journal. They recommended Thompson, and the first number of the *Central Law Journal* was issued on January 1, 1874, with John F. Dillon as editor, and Seymour D. Thompson, assistant editor. A year later Judge Dillon retired and Thompson became sole editor. The success of the new publication soon

gave Thompson a reputation in all parts of the country ; but more than that, it gave him the esteem and friendship of Judge Dillon, who a year later appointed him a master in chancery of the federal courts, in which position there came before him during the next two or three years cases involving large sums of money, and from which he earned some handsome fees.

About this time (December, 1876) he formed his first legal partnership with John D. Lawson, under the firm name of Thompson & Lawson. Only once more was he associated with another in legal practice—in 1892, after his retirement from the bench. In 1880 he was nominated as the Republican candidate for judge of the St. Louis court of appeals, and elected by a considerable majority in a democratic district. In 1876 he purchased the *Central Law Journal*, but sold it to the present publisher in 1877, retiring then from its editorial control, though in 1885 he became its editor again for one year.

From the day he became editor of the *Central Law Journal* until the day of his death he was a constant writer on legal topics—magazine articles, addresses before state and national Bar Associations, legal monographs and treatises flowed from his pen. In 1875 he published an annotated edition of the bankrupt act of 1867, with the amendment of 1874 ; and in 1878 a treatise on “Homesteads and Exemptions” ; in 1879 a treatise on the “Liabilities of Stockholders in Corporations” ; and in 1880 his “Cases on Negligence.” In 1880 he published “Carriers of Passengers,” on the same plan as “Negligence,” and a monograph on “Charging the Jury.” In 1881 he published a work on the “Liabilities of Directors and Other Officers and Agents of Corporations,” a companion to his previous work on the “Liability of Stockholders.” In 1882 he issued in conjunction with E. G. Merriam, of the St. Louis Bar, a work on “Juries,” and in 1889 an extensive work on “Trials,” in two volumes, and a monograph on “The Law of Electricity.” In 1895 his greatest work, a treatise on “Corporations,” in seven volumes, was published in San Francisco. This is beyond doubt the most extensive legal

treatise on a single topic ever published in the English language. At the time of his death a second edition of "Negligence," greatly enlarged, and to be issued in six volumes, was going through the press.

In 1875 Judge Thompson became editor of the *Southern Law Review*, which had been transferred from Nashville to St. Louis, and was afterwards merged in the *American Law Review* when that magazine was brought from Boston to St. Louis. From 1883 to his death he was the principal editor of the *American Law Review*, and his writings in that periodical are familiar to every reading lawyer on the continent. From 1880 to 1892 were his busy and his happy years. His salary as appellate judge assured him a comfortable living. His royalties during those years were very large, for his reputation was such that he was able to obtain from his publishers a higher royalty than that obtained by any other legal writer, and his books had a very wide sale. He was editor of the *American Law Review* with a salary equal to that of a circuit judge, and the columns of every law review or periodical in the country were open to him at all times and at his own price. But though a money earner, he was not a money saver. Like other great lawyers, like Daniel Webster, like Lord Russell, his wants outran very often his bank account. He was fond of travel, and when he traveled he would see everything there was to see, no matter at what cost. In his vacations he was across the ocean often before his friends knew that he had left town, and in these twelve years he wandered over every part of Europe and a part of Asia. He knew the great capitals from London to Buda-Pest and Constantinople and the public men of the continent; but he was fond of wandering into unfrequented portions of the globe. He had traversed the Siberian railroad to its then terminus. He knew Russia and Denmark and Norway and Sweden as well as he knew England and France. He had watched the midnight sun more than once from North Cape, and had crossed Iceland on horseback. He was generous to his family, and no friend of the

days when he knew what poverty was ever appealed to him for assistance in vain. He was extravagant in engaging assistants in his clerical work, and was more than generous to the corps of young lawyers who in the old days assisted him in the collection of authorities and digests of matter for his articles and books.

Outside of his law writings the legal periodicals contain hundreds of articles and notes from his pen. He published from time to time accounts of his European travel, and the proceedings of many of the State Bar Associations contain addresses delivered and papers read by him. Should some one undertake the collection of all these fugitive and miscellaneous writings, it would be found that Judge Thompson must have been one of the most tireless and indefatigable literary workers of the present day.

From 1880 to 1889 he was a lecturer in the law department of the University of Missouri, and for several years he delivered a course of lectures on corporation law in the Law School of Northwestern University of Chicago. In 1882 the University of Missouri conferred on him the honorary degree of doctor of laws.

Judge Thompson's legal works are largely in a class by themselves. The average legal author of to-day is hardly one in fact. He originates nothing. He has no opinions; he does not think; he is simply a compiler of prepared material. His labor consists chiefly in a skillful use of the digests, and his production is but a digest or compilation of cases. Of course, what the profession want, as a general rule, is the opinions of the courts, and not those of an author, but within reasonable limits it may be permitted to the latter to wander from the beaten paths of adjudicated cases, and if not to cull the fresh and untouched flowers of abstract jurisprudence, at least to cut down the underbrush and lop off the withered branches which stand in the way of progress. The number of law book compilers who are also authors is small; but Judge Thompson, in the case of every one of his books, must be counted among the

number, for every book written by him evinces great thought as well as great industry. He leads as often as he follows the courts; and his works tell us not only what the law is, but what, in his opinion, the law ought to be. This was his favorite field; and in the preface to his best-known work he expresses a doubt whether in the writing of it he was exercising the dignified office of a commentator or the more humble one of a carpenter—joiner of other men's ideas.

The same intellectual bent was characteristic of his judicial work. He was impatient of precedent; he would reason the case from principle. To wander through the musty books of the past to find out if some judge of the days of the Tudors had decided the question and then to follow this decision blindly seemed to him the acme of absurdity. To his mind the men of those days were, compared to us, barbarians. Why should he care for the opinion of Coke who murdered Raleigh or that of Bacon who bought and sold justice. Hence, though he was deeply read in the old writers, he had no place for their opinions if they conflicted with his ideas of justice and right in the lights of the present century.

To those of his intimate friends—and they are many—who have more than once been privileged to sit around a table at which he sat, and listen to him as he talked of his travels or gave his impressions of men whom he had met, or his criticisms of the historians, the poets and the moralists, this was a treat long to be remembered. One thought at once of Dr. Samuel Johnson and the literary club, for he had the Johnsonian figure—medium height, burly and slow in movement, and the Johnsonian deliberation in his speech. His memory was extraordinary. He seemed to retain every scrap of information he had read and almost in its very words. He would quote page after page of Gibbon, of Macaulay, of Shakespeare, of Milton, of Byron, and rarely make a mistake.

His first reported opinion appears in 9 Missouri Appeals 436 (*Clarke vs. Thatcher*), and holds that a monthly tenant has not such an interest in the premises occupied by him as to

give him a right to maintain a bill in equity to restrain a nuisance affecting the premises. The opinions written by him appear in all the successive volumes of the Missouri Appeal Reports to volume 52. In 1892, on leaving the bench, Judge Thompson formed a partnership with Nathan Frank, of the St. Louis Bar, to whom he had eleven years before dedicated his work on "Stockholders in Corporations." He spent a portion of the next few years in California, attending to the issuing from the press of the Bancroft-Whitney Company, of San Francisco, of the work on "Corporations." In 1898 he removed to New York city, where until his death he was engaged for the most part in legal authorship, though he had some important cases each year in which he appeared as counsel. He lived first on Brooklyn Heights, but two years ago removed to New Jersey.

Judge Thompson was married in January, 1865, to Lucy A. Jamison, West Union, Iowa. His five children survive him—two daughters, one son, a practicing lawyer in Racine, Wisconsin, another a physician in St. Louis, the third a physician in Winlock, Washington.

### HERBERT BEACH TURNER.

Herbert Beach Turner was born August 3, 1835, at Cheshire, Connecticut. He died at Englewood, New Jersey, July 8, 1903. He was admitted to practice in the state of New York in 1858 and established a law office in the city of New York under the firm name of Turner & Kirkland, which was subsequently changed to Turner, Kirkland & McClure. Upon the death of Mr. Kirkland another firm was formed under the name of Turner, Lee & McClure. In 1888 this last named firm was dissolved and the firm of Turner, McClure & Rolston formed, which continued until 1901, when it was succeeded by the firm of Turner, Rolston & Horan.

Mr. Turner in 1862 became counsel for the Farmers' Loan and Trust Company, which position he continued to hold until the time of his death. This trust company, the oldest in



America, was often called upon to act as trustee under corporation mortgages and in other relations to corporations. Mr. Turner was thus brought to the consideration of many questions of corporation law, and it was in this field that he particularly excelled. He took part in many of the most important railroad foreclosures and reorganizations, among others that of the Northern Pacific Railroad. The principles applicable to railroad foreclosures and receiverships, such, for instance, as those relating to priority of lien of certain classes of unsecured claims over recorded mortgages and the issuance of receivers' certificates, largely undeveloped when he began his practice, were evolved to a great extent through the cases in which he participated.

While Mr. Turner is probably best known in the domain of railroad litigation, his efforts were not limited to that field. He was required to consider questions pertaining to other classes of quasi-public corporations, and also to those more strictly private in character. Mr. Turner was, however, not simply a corporation lawyer. Representing as he did many individuals, as well as corporations, engaged in varied pursuits, he was active in nearly all the fields of his profession and had, in the course of his career, to meet all the calls upon a general practitioner of the law. Cases in reference to the rights, powers and duties of executors, administrators, trustees, guardians and other persons acting in representative or fiduciary relations, and cases involving the construction of wills and deeds of trust and relating to titles and rights in real property were constantly presented to his attention.

Although Mr. Turner appeared often in the courts of New York and to some degree in the courts of other states, his practice was to a great extent in the federal courts. He appeared many times in the Supreme Court, and also in every circuit of the United States and in a majority of the districts. He was personally known to most of the United States judges who occupied seats upon the benches of the various districts during the period of his practice. A reference to the digests

and text books will disclose the number of cases in which the Farmers' Loan and Trust Company was a party which are now cited as authority on various propositions of law and in which Mr. Turner took part.

Mr. Turner was a man of charitable disposition and deep religious feeling, a profound student of the Bible and active in the work of the Episcopal Church of which he was a member.

## NORTH CAROLINA.

### THOMAS NORFLEET HILL.

[Taken from the *North Carolina Journal of Law.*]

Thomas Norfleet Hill was born March 12, 1838, and died July 24, 1904, at his home in the town of Halifax. He had been in failing health for several months, when an affection of the lungs became the immediate cause of his death.

Mr. Hill's family name is well marked in the history of his state. His great-grandfather, Whitmel Hill, was a notable figure among those who brought North Carolina from under British rule and then into the American union. History has said of him that he was a man of fine literary attainments, a devoted patriot and useful citizen.

Whitmel Hill married Winifred Blount, a daughter of Thomas Blount, of Chowan County. He left three sons and a daughter. One of his sons, Thomas Blount Hill, married Rebecca Norfleet, of which marriage was born, besides other children, Whitmel J. Hill, who afterwards resided on his plantation in the Scotland Neck section of Halifax County, where his son, Thomas Norfleet Hill, was born and brought up in that old order of Southern life which has now passed away from us, and which he, in his life and character, illustrated and adorned.

After preparatory study at the Warrenton High School, but chiefly at Vine Hill Academy, in Scotland Neck, he entered the freshman class at the University of North Carolina in

June, 1853, and was graduated in June, 1857. As was the custom then quite often with those who chose the law as a profession, he attended the law school of Chief Justice Pearson in the years 1858 and 1859, receiving his county court license to practice in 1859. The following year he opened his office in the town of Halifax, where he practiced continuously to the time of his death, except during the period of the war, when he was a Confederate soldier.

Mr. Hill was a diligent and painstaking lawyer. He was never showy, but he rose constantly and surely in the esteem of his brethren and of his clients. He was never swift in his conclusions, and did not deliver horseback opinions. When he had taken time to consider and to arrive at a conclusion, he rarely ever missed the mark.

Mr. Hill was often appointed a referee; and in that most useful auxiliary court his accurate knowledge and power of analysis were at their best in the investigation of difficult questions of fact or of law; and he was never so happy as when, among his books as his familiar friends, he was preparing his briefs for the Supreme Court. He loved the profession of the law. It was the mistress of his intellect. He was a devoted member of the North Carolina Bar Association, and nothing gave him keener social pleasure than attendance upon its meetings. He never desired any office outside of his profession. He was the presiding justice of the Criminal Court of Halifax County from its inception in 1877 until it was discontinued by an act of the General Assembly of 1901.

On June 4, 1861, Mr. Hill married Eliza Evans Hall, a daughter of Dr. Isaac Hall, of Pittsboro, North Carolina, and a granddaughter of Judge John Hall, formerly a justice of the Supreme Court. Mrs. Hill died October 24, 1884, leaving three sons and five daughters, all of whom are now living.

Mr. Hill married a second time, March 1, 1887, Mary Amis Long, a daughter of the late N. M. Long, of Weldon. She died October 12, 1901. He was very fortunate and very happy in his domestic relations.

While he was a close and constant student of law, he had a keen literary taste and read widely. His sense of humor was quick and responsive. And through all his being shone ever the light of his deep religious faith. There was no bitterness in his heart. He loved his fellow man, and from all the people among whom he went came to him a love whose depth they only knew when his voice was still. He loved his fireside; the cool and quiet cloister of his books; and yet he entered the lists of every combat where duty called with undaunted spirit and knightly honor.

## OHIO.

### LEWIS B. GUNCKEL.

Lewis B. Gunckel, of Dayton, Ohio, was the son of Michael and Barbara Gunckel, of German Township, Montgomery County, Ohio, and the grandson of Judge Philip Gunckel, of the same place, one of the earliest pioneers of his county and state, and was born on October 15, 1826.

Receiving his elementary education from the schools of his native township, he subsequently had all the advantages of collegiate training at Farmers' College, in Hamilton County, receiving his degree in the year 1848. After his graduation he began the study of law with Moses B. Walker, a prominent lawyer of that day. He finished his legal education at the Cincinnati Law School, from which he was graduated in the year 1851. Entering upon the practice of the law, he soon formed a partnership with his preceptor under the name of Walker & Gunckel. Later, in 1854, he entered into partnership with Colonel Hiram Strong, under the name of Gunckel & Strong, which connection existed until the death of Colonel Strong, in the year 1864. Later he associated with him his nephew, Edward L. Rowe, the firm being known as Gunckel & Rowe, and after some years Webster W. Shuey was added to the firm, it then being known as Gunckel, Rowe & Shuey.

In 1872 he acted as special commissioner to investigate the frauds alleged to have been practiced upon the Indians, and his efforts resulted in the conviction of the guilty parties and adequate provision against similar occurrences in the future. In 1872 he was elected to Congress from the district composed of the counties of Montgomery, Greene, Preble and Darke. In 1874 he was renominated by his party, but failed of re-election. After this he resumed the practice of his profession, and, it is believed, never afterwards offered himself as a candidate for any office or permitted his name to be used in that connection.

On November 15, 1860, he married Miss Catherine Winters. He had four children, two of whom, with his widow, survive. Mr. Gunckel's home life was of the happiest character. In his relations with his fellow men he was honorable in all his dealings. In the friendships he contracted he was warm and sincere. As a public man he was, especially in early life, a most vigorous and ardent advocate of the principles in which he believed and of the party to which he always belonged. He was a speaker of great power and persuasiveness and devoted much time to political campaigns, and there was a candor in his public utterances that commended him to the independent or thinking voter.

As a lawyer he was in the front rank. He was a wise interpreter of the written and unwritten laws that govern mankind, a safe, reliable counsellor, and a most aggressive opponent when his client was driven to the protection of his rights. But he was a constant and earnest enemy to litigation. There never was a time in any controversy at any stage of it that he was not ready to consider honorable terms of settlement and to induce his client to accept them. He believed, as all true lawyers do, that litigation is the bane of society, an evil to be countenanced only when right and justice can be vindicated in no other way. He was a most formidable adversary in court, and was specially fitted by nature and education for the settlement of controversies before a jury, both in the examination of

witnesses and the argument to the jury. He retired from general practice in the year 1895, his retirement not being announced or generally known until the year 1900, when he withdrew his name from the firm. But he continued to advise a few friends who would not permit him to decline their business. During his professional career he was connected while in active practice with most of the important business and litigation of the county and neighborhood. His most conspicuous service was as general counsel for the United Brethren Church in its controversy with the seceders, who organized a new church and attempted to seize the church property. Millions of dollars of property were involved in this struggle and the questions of fact and law were of the greatest importance and interest. The contest was waged in most of the middle and western states, as well as in Canada. He was the director of the fight in all these localities, and success crowned his efforts in every instance but one. He became profoundly versed in the legal and ecclesiastical questions involved and was as well prepared to fill the pulpit in any church of the organization as he was to argue the points of law to the chancellor in court.

When Mr. Gunckel retired from active practice he did not become idle, though he had reached the age of threescore and ten. Relieved from the burden of professional work, he turned his attention in part to literary pursuits, for which by much reading and travel he was well qualified. He devoted much study to social questions with a view to municipal reform. He also devoted himself in great measure to various charitable works, including the Woman's Christian Association and the Associated Charities of his city. Some years before he took an active part in the passage of a state law for a Soldiers' Home and later in having the National Military Home for disabled volunteer soldiers located in his county. He was one of the first managers of the institution and was its local manager and secretary continuously until about the year 1876.

His death occurred suddenly on October 3, 1903.

## RICHARD A. HARRISON.

Richard A. Harrison, of Columbus, Ohio, son of Rev. Robert and Mary Almgill Harrison, was born April 8, 1824, in the town of Thirsk, in Yorkshire, England. He came to Ohio at the age of eight with his parents, and soon thereafter settled in Springfield, Ohio, where he obtained his education. He was graduated from the Springfield High School, and soon after entered the law office of Judge William A. Rogers, of that city, as a law student. Here he pursued his law studies till he entered the Cincinnati Law School, from which he was graduated in the spring of 1846.

He was admitted to the Bar April 8, 1846, and at once commenced the practice of his profession in London, Ohio, where he remained until May, 1873, when he removed to the capital of the state. In 1857 Mr. Harrison was elected a member of the Ohio House of Representatives; in 1859 he was elected a member of the Ohio Senate; and in 1861 was elected a member of Congress to fill the vacancy occasioned by the resignation of ex-Governor Thomas Corwin, appointed minister to Mexico. In 1875 Mr. Harrison was appointed by Governor Hayes one of the judges of the Supreme Court Commission, but declined the honor. In 1887 he was tendered by Governor Foraker an appointment as supreme judge of the state and again declined, finding that he could not afford to give up his large practice. Mr. Harrison was the third president of the Ohio State Bar Association.

His great mental endowments, vast acquirements and prodigious industry were seen and felt in every case in which he appeared. His labors for many years were in the higher courts, and his capacity to determine the pivotal question in a case—the true principles underlying it—and to sustain his views with ripe scholarship and masterful arguments have long been acknowledged by the brightest minds in the state and elsewhere.

It is not simply as a great lawyer that Judge Harrison won admiration, for when he found time to relax, to unbend and

yield to the allurements of the social instinct, he was then incomparably charming. Few men were so genial, few so enjoyable, and few since the lamented Lincoln could tell a better, short-pointed witty story. Nor was he wanting in the quaint rare humor that lays hold of our better nature and lingers in the memory like a delightful dream.

On December 21, 1847, Judge Harrison was united in marriage to Miss Maria L. Warner, of London, Ohio. He died July 30, 1904, in Columbus, and his widow, two sons, two daughters and several grandchildren survive.

## PENNSYLVANIA.

### RICHARD COLEGATE DALE.

Richard Colegate Dale was born in Philadelphia on March 29, 1853, and died at Chestnut Hill, a suburb of that city, on May 22, 1904.

His grandfather, Elias D. Woodruff, was graduated at Princeton in 1804, became a member of the New Jersey Bar, and died at the age of thirty-six. He was a son of Aaron Dickinson Woodruff, attorney-general of New Jersey.

Mr. Dale was graduated with distinction from the University of Pennsylvania, in the class of 1872. Reasoning from his own experience, he always maintained that there was no adequate substitute for the old-fashioned college course as a preparation for the study of law.

He was admitted to the Philadelphia Bar June 5, 1875. In the same year he became one of the editors of the *Weekly Notes of Cases*, a publication giving advance reports of the decisions of all the courts of the state, both of inferior and appellate jurisdiction, and until 1888 he furnished the index, with a single exception, to every volume.

In 1880 he was chosen by John C. Bullitt as the junior colleague of Judge Ashbel Green and himself, in the representation of McCalmont Brothers & Company, of London, in



the controversies growing out of the insolvency of the Philadelphia and Reading Railway Company. Shortly afterwards, he entered the office of Messrs. Bullitt & Dickson, and was thereafter in active practice without intermission until overtaken by his last illness. In the interval of a little more than twenty years, he devoted himself to his professional labors with unremitting assiduity. His legal judgment was exceptionally sound, and he was always the choice of counsel, when he would consent to serve, as a referee or master.

At the same time, he developed unusual capacity for dealing with questions of business, and was appointed executor and trustee of many large estates, and invited to become a director in the leading financial institutions of the city. He declined, however, to accept any outside duties, except that he consented to become a trustee of the University of Pennsylvania and of the Drexel Institute, and vestryman of his church and member of the standing committee of the diocese of Pennsylvania. But he was always ready to assume any duty of a professional character, and was for many years a member of the Board of Examiners for admission to the Bar; and having been appointed in 1901 as one of the commissioners on Uniform State Laws, he was reappointed and was serving his second term at the time of his death.

In June, 1900, he read a paper before the Pennsylvania Bar Association, upon "The Obligations of the Legislature, as well as the Judiciary, to Respect Constitutional Limitations," and in August, 1901, he read a paper before the American Bar Association at Denver, upon "The Implied Limitations upon the Exercise of the Legislative Power." Questions of this character always deeply interested him, and one of his most notable arguments was upon the constitutionality of a direct inheritance tax upon estates exceeding \$5000 before the Supreme Court of Pennsylvania.

Until within a few months of his death, his strength had apparently been equal to any demand upon him, but in the latter months of 1903, he was obliged to withdraw from his

office, and was never able to resume his work. The end came in the month of May.

His death was recognized in the public prints as a loss to the community at large as well as to the profession, and all the courts adjourned upon the day of the Bar meeting. Brief extracts from a few of the speeches made upon that occasion will give the estimate of his professional associates. Chief Justice Mitchell, who presided, said :

“In natural abilities, carefully trained and cultivated, in learning and devotion to his profession, and, above all, in high personal and professional tone, he was an honor to this, as he would have been an honor to any Bar.”

Judge Dallas said :

“Mr. Dale's practice brought him quite frequently before the federal courts of this circuit, and it is very gratifying to me to have this opportunity to testify, as I know it would be gratifying to all the judges of those courts, that I should testify, that no man ever appeared before them in whom they had greater reliance, or from whom they received more valuable assistance. He was in the highest degree what every lawyer ought to be, a counsellor of the court; and the judges I have mentioned constantly referred to him as such. His reasoning upon questions of law was always methodical, logical, persuasive—oftentimes, as you, sir, must well know, convincing; and his discriminating analysis and discussion of authorities never failed to be enlightening when they came to be considered by the court. But above all—above all—his unfailing truthfulness, his manifest integrity, the very inborn sincerity of the man, begat a confidence which was never misplaced or shaken.”

In the course of an elaborate address, John G. Johnson said :

“Success, far beyond the average, in winning verdicts, resulted from the manner in which he reached the higher and better nature of the jurors. He appealed to their sense of duty and manliness, and led them, thereby moved, to disregard the baser considerations so often controlling. His success in arguments before the court is matter of legal history, known to the whole Bar. Brief as are the summarizations in the reports of

the arguments which have often moulded the law, these are sufficient, in his case, to indicate, to some extent, why he succeeded so well. It was impossible for him to present a point in which he did not believe. The ears of judges are always open to those, like him, who never deceive them; to those, like him, who speak only when they have something to say; to those, like him, who help them in reaching proper decisions.

“Of him it may be said, with truth, that he never lost a case another would have won.

“He was no specialist. His familiarity was with the science of law in every branch.

“A devoted, untiring, student whilst young, he remained a student until his death.

“His kindness and courtesy to his juniors bound them to him with bands of steel.

“A conscientious desire, honest, truthful and sincere, to the fullest extent of his ability, to do his whole duty towards his client, without doing injustice to his adversary, was the keynote of his professional character. Without qualification or limitation, he held the respect and affection of all with whom he came into business relations.

“Such he was as a lawyer. As a man, he was simply lovable—nearly perfect.

“His nature was most sympathetic. He gave, without stint, sympathy and kind offices. When offered to him, he accepted them with grateful appreciation. In his character he blended, almost uniquely, purity and simplicity, sweetness and strength. He was utterly devoid of malice. With no fear of contradiction, it may be asserted that no one can ever recall an unkindly word, by him uttered, of any human being.”

The closing speech was made by Wayne MacVeagh, who said:

“I only rise to add my entire concurrence in all that has been said in praise of the professional ability, of the sweetness of personal character, and of the high standards of professional and civic conduct which illustrated the entire life of the friend whose untimely death we all so sincerely deplore.”

Without further citation, it will be apparent that Mr. Dale enjoyed in a pre-eminent degree the esteem and affection of

the members of his own Bar, and as he had appeared in the courts of many other states, his friendships included many leading men outside of Pennsylvania. It is believed that wherever he was known, it will be felt that, in his premature death, the American Bar lost a lawyer of the first order.

### CHARLES MOSELEY SWAIN.

Charles Moseley Swain died July 23, 1904. He was born in Philadelphia on July 7, 1849, and was the son of William M. Swain, a native of the State of New York, and Sarah James, a native of Bristol, England.

He was educated in private schools and in Crittenden Commercial School and Saunders Institute in Philadelphia, and attended the law school of the University of Pennsylvania. In 1867 he entered the law offices of Samuel Hood, where he studied for four years, and was admitted to the Bar in 1871. He continued in the active practice of his profession until 1886, when he was elected president of the City Trust, Safe Deposit and Surety Company of Philadelphia, and thereafter gave his time and attention to the duties of this office until his death.

He was also actively identified with a number of other financial institutions and business enterprises. From 1877 to 1881 he was a director of the West Philadelphia Passenger Railway Company; in 1885 he became a director of the American Academy of Music; and in 1886 a director of the Franklin Fire Insurance Company. He was also a director of the Merchants' National Bank of Philadelphia, and a director and for a time president of the Edison Electric Light Company, and a director of the Philadelphia Electric Company.

He found time to serve as a member of the common council from 1896 until January 1, 1902, when he resigned because of ill-health and lack of time to perform conscientiously his duties as councilman.

Although not in active practice for nearly twenty years, he kept up his acquaintance and friendship with his colleagues at

the Bar, and was a member of the American Bar Association and of the Lawyers' Club. He was also a member of the Union League and of the Art Club. For years he was active in the Masonic fraternity, in which he held high office.

Mr. Swain will be remembered as a man of modest, retiring disposition, with a warm regard for his friends, all of whom held him in the highest esteem.

### ROBERT JARVIS C. WALKER.

Robert Jarvis C. Walker was born in October, 1838, in the old town of Chester, Delaware County, Pennsylvania, not far from the earliest landing place of William Penn, and died in the city of Philadelphia on the 19th day of December, 1903.

His school days were spent at East Hampton and Cambridge, Massachusetts, and subsequently he entered Harvard University, being graduated with honor at the age of twenty in the class of 1858. Turning his attention to the law after an unusually brief period of study he was admitted to the Philadelphia Bar in 1860, and two years later to the Bar of the Supreme Court of Pennsylvania and of the Supreme Court of the United States. While practicing his profession he served two terms in the councils of the city of Philadelphia and his leadership placed him in the chair of the important committee on finance. For several years he was the owner, as well as editor, of the *Saturday Evening Post*, one of the oldest journals in America.

He married the only daughter of William Weightman, a leading chemical manufacturer, and in 1878 removed from Philadelphia to the city of Williamsport, in the county of Lycoming, to take charge of vast interests in coal, lumber and land. He was elected a member of the Forty-seventh Congress upon the Republican ticket. His efforts secured the purchase of a site and the erection of a suitable building for the United States District Court, post office and other government offices in the city of Williamsport. He was ever in favor, to use his own words, of "that practical legislation

which protects our own people from pauper labor, pauper wages, a pauper's life and a pauper's grave."

Upon his retirement from public life his constituents bore willing testimony to his ability, sound judgment, public spirit and spotless integrity. While always true to the policy and principles of his party, it was no less his aim to represent, promote and protect the best interests of all the people of his district, no matter of what creed, party, color or condition.

In private life Mr. Walker was a gentleman of captivating charm of manner, of liberal views and unusual culture. He had traveled extensively in all parts of the world, and his mind was richly stored with knowledge of many books and many phases of life in distant and strange lands. His conversation was full of instruction and he possessed great skill as a raconteur. He united the energy and good sense of a man of affairs to the graces of scholarship and the loyalty of friendship.

## TEXAS.

### ROBERT GREEN WEST.

Robert Green West was born on June 19, 1860, and died in the city of Austin, Texas, the place of his birth, on April 26, 1904. After being graduated at the Austin Military Institute, he was graduated at the University of Michigan in 1882. He was afterwards graduated as a law student at the Columbia University in Lebanon, Tennessee, and studied in the law office of Ballinger, Jack & Mott, in Galveston, Texas. On April 1, 1884, Mr. West was admitted to the Bar by the Supreme Court and began the practice of law in Austin as a member of the law firm of West & McGowan, and that firm being dissolved he formed a partnership with Judge T. B. Cochran on January 1, 1893, which continued to the time of his death.

On the 30th of November, 1887, he was married to Miss Emma Grant, daughter of Dr. R. E. Grant. His wife and four children survive him. He was a grandson of Thomas H. Duval, who was for many years a federal judge. His father, Charles H. West, was at the time of his death an associate justice of the Supreme Court of Texas. Descended from such ancestors, it was but natural that Robert G. West should at an early age take a prominent rank in his profession. He enjoyed the confidence and esteem of all his professional brethren.

## WISCONSIN.

### LYMAN E. BARNES.

Lyman E. Barnes, of Appleton, Wisconsin, was born at Weyauwega, Wisconsin, June 30, 1855, the son of pioneer parents. He was educated in the public schools and admitted to the Bar after a thorough course of study in Columbia Law School in 1876. He commenced the practice of his profession soon after his admission in Appleton, Wisconsin, and not long afterward he formed a partnership with John Goodland, which continued until 1882, when the latter became judge of that circuit. Mr. Barnes then removed to Rockledge, Florida, where he remained about five years engaged in the practice of the law. He returned to Appleton, resumed practice there and was elected district attorney. He was a democrat in politics. In 1892 he was elected to Congress and served one term. Mr. Barnes was successful in his profession and was held in very high esteem. He was an able, industrious and vigorous lawyer.

He died after a short illness on the 16th of January, 1905.

### BREESE J. STEVENS.

Breese J. Stevens died at his home, at Madison, Wisconsin, on the 28th of October, 1903, after an illness of several months.

Mr. Stevens was born at Sconondoa, New York, near Oneida, on the 22d of March, 1834, and was the second son of Augustus C. and Elizabeth Breese Stevens. The father of Mr. Stevens and his family removed to Flint, Michigan, and lived there for a short time, but the father died in 1845, and the family then returned to the old home.

Mr. Stevens's preliminary education was obtained at Whitesboro and Cazenovia, and in 1850 he entered Hamilton College. He was graduated in 1853, when nineteen years of age. He had early formed the purpose of studying law, and while at college he had the benefit of the instruction of Theodore W. Dwight, who was then professor of law and history, beginning his career as one of the most distinguished teachers and educators of his profession.

Soon after graduation, Mr. Stevens entered the law office of Timothy Jenkins, one of the celebrated lawyers of the state, and later he pursued his studies at Syracuse, in the office of Nathan F. Graves. In 1856 he came to Madison, Wisconsin, where he remained until his death.

He first married Miss Emma Curtis Fuller, the eldest daughter of Morris E. Fuller, of Madison, who lived but a year. His second marriage, in 1876, was to Miss Mary Elizabeth Farmer, the second daughter of the late Marcellus Farmer, of Syracuse, New York. Mrs. Stevens and two daughters have survived him. His domestic life was peculiarly happy, and for many years his hospitable home has welcomed his large circle of friends.

The circumstances under which Mr. Stevens came to the new state of Wisconsin were such as to influence greatly his whole career. He was of good birth, and proud of his ancestry and family name. Among his kindred and friends in New York were those who had large financial interests in Wisconsin, and from the first he was charged with important responsibilities by eastern friends who knew him and trusted him.



His first law partnership was with J. W. Johnson, the brilliant advocate, of whose wonderful eloquence traditions still remain, and H. M. Lewis, now referee in bankruptcy. This partnership was of short duration, but that of Stevens & Lewis continued from 1857 to 1868. In 1868 James M. Flower became a member of the firm, and in 1870 the partnership of Stevens, Flower & Morris was formed. When Mr. Flower left Madison for Chicago, Mr. Stevens continued to be associated for many years with W. A. P. Morris, who had been his schoolmate at Hamilton College. For some years that distinguished lawyer, the late I. C. Sloan, was a member of the firm which was known as Sloan, Stevens & Morris, and again as Stevens & Morris after Mr. Sloan retired.

Mr. Stevens acted for many years as attorney for the Fox and Wisconsin River Improvement Company, and afterward the Green Bay Canal Company. He acted at times as attorney of the Chicago and Northwestern Railroad Company. He was also attorney for the Madison and Portage Railroad Company, and was for a considerable time manager and attorney for the Michigan Land and Improvement Company; also the Wisconsin attorney for the Illinois Central Railway Company. In his various capacities he took an active part in the celebrated land grant litigation which for some years engaged the ablest legal talent of the Northwest. He was also engaged in much important water power litigation. He was largely engaged in complicated tax litigations and foreclosures affecting large corporate interests connected with some of the corporations already mentioned.

During nearly all his active life he affiliated actively with the democratic party and was among its most trusted advisers. He never sought political office and never accepted it save on one occasion, when he was nominated for mayor of Madison while absent in Washington.

For many years he was vestryman of the Episcopal Church of his city and was always active and zealous in its support. In 1891 he was appointed as one of the members of the board

of regents of the State University of Wisconsin and served in that capacity until his death. As one of the resident regents and as one of the executive committee his duties on the board were exacting and constant and he gave himself to his work with a devotion never surpassed. This long service as a regent was a labor of love and yet not without many sacrifices. It was his mode of gladly paying his debt of gratitude to the state of his adoption, and he paid the debt royally.

He was one of the best and purest of that circle of cultivated and forceful men who early came from the East to the new State of Wisconsin and loyally served their profession and their state.

SUMMARY OF PROCEEDINGS  
OF  
STATE BAR ASSOCIATIONS.

ALABAMA STATE BAR ASSOCIATION.

The twenty-seventh annual meeting was held at Montgomery on July 8 and 9, 1904. The President's address was delivered by Edward de Graffenried, and dealt with legislation of Congress, of the State of Alabama and other states, with a general review of recent decisions by the federal courts.

The annual address was delivered by Fabius H. Busbee, of Raleigh, North Carolina, on "The Duty of Southern Lawyers Toward the Negro Question."

The report of the Committee on Judicial Administration and Remedial Procedure was presented by the chairman, John C. Anderson, and advocated that in damage cases, where the ruling of the lower court was free from error, except as to excessive damages, the damages should be reduced by the Supreme Court and the case affirmed; also permitting trial judges to reduce the amount of damages rather than grant new trials upon the ground of excessive damages alone. A suggestion was also made in the way of saving of costs in doing away, as far as possible, with witnesses before the grand jury, and in place thereof have the written testimony on preliminary examination; suggesting that the act of the last legislature for calling special terms of court be amended so as to permit the sheriff, clerk or probate judge to draw jurors for the special terms, and pointing out the absolute need for a reformatory for youthful criminals. The report of the Committee on Correspondence was presented by the chairman, F. G. Bromberg, suggesting that a Commission on Uniformity of Legislation be

established by this state, and advocating the enactment by the General Assembly of Alabama at its next session of the Bills of Exchange Act. The report of the Committee on Local Bar Associations was presented by the chairman, Phares Coleman, advocating the formation of local Bar associations throughout the state, which should have the right to appoint delegates to the meetings of the Alabama State Bar Association, and that the State Association should be composed of representatives from each local association, and these representatives should constitute the legislative and governmental body of the State and Local Associations. The plan suggested, however, not to prevent attorneys from becoming members of the State Association, with the right to discuss all questions considered by the Association, but without the right to vote on questions presented for discussion.

The report of the Central Council was made by the chairman, Thomas R. Roulhac, and called attention to the work done by the Council under the act of the legislature of October 3, 1903, conferring power on the Association and the Central Council to institute proceedings for disbarment against attorneys of the state, and making it the duty of the solicitors of the state to prosecute offending attorneys when required by the Association or Central Council.

Papers were read by Henry E. Gipson on "Delay of the Law as an Excuse for Lynchings"; by S. W. John, on a "Just and Fearless Judge—John Moore"; by C. P. McIntyre, on "Civil Procedure"; by F. M. Purifoy, on "Growth and Development of the Scope and Power of Trust Companies," and by Alexander Troy, secretary of the Association, giving a brief history of the Association for the past twenty-six years.

#### BAR ASSOCIATION OF ARIZONA.

No report has been received.

## BAR ASSOCIATION OF ARKANSAS.

The Bar Association of Arkansas held its seventh annual meeting on May 26 and 27, 1904, in the United States Circuit Court room at Little Rock, being one of the best and most interesting meetings held by the Association. The address of the President, James F. Read, of Fort Smith, was a very entertaining comment on the Association, what it has done and should do, and the relation of the lawyer to the administration of our government.

There was no annual address.

Upon the recommendation of the Committee on Education and Admission to the Bar, the Association recommended to the legislature the passage of an act providing that anyone desiring to be admitted to the Bar should be examined before a State Board appointed by the Supreme Court; that such examinations should be thorough and both oral and written, and that the board be required to inquire thoroughly into the moral standing of each applicant.

The Association adopted the report of the Committee on Law and Law Reform, recommending the calling of a constitutional convention for the purpose of drafting a new state constitution that will meet the demands of a growing state, and be elastic enough to permit the people to tax themselves for schools and improvements and keep pace with sister states. There was also included in the report a recommendation that the law of perjury be amended so as to punish false swearing in court, whether the facts sworn to be material to the issue or not.

The joint resolution for constitutional amendment and an additional judge of the Supreme Court, reported by the Special Committee on Legislation at the last meeting, was submitted to the people, but failed to receive a majority of the votes cast at the election.

A paper was read by Daniel Hon, of Waldon, on "The Probate Court."

## CALIFORNIA STATE BAR ASSOCIATION.

No report has been received.

## COLORADO BAR ASSOCIATION.

The seventh annual meeting was held at Colorado Springs on August 31 and September 1, 1904.

The President's address was delivered by Joel F. Vaile, of Denver, who spoke upon the subject "The Legal Relations Existing between the Executive and the Judiciary in Times of Insurrection."

The annual address was delivered by Judge John F. Philips, of Kansas City, Missouri, upon the subject "The Ideals of the American Lawyer."

The matter which caused the most discussion was the proposed constitutional amendment consolidating the Supreme Court and the Court of Appeals, the Association being almost unanimously in favor of the amendment.

The other addresses before the Association were as follows: Ernest Knaebel, of Denver, "Some Questions of International Law Arising out of the Russo-Japanese War"; John A. Ewing, of Leadville, "Should Our Mining Laws be so Modified as to Confine the Grantee of a Lode Mining Claim within Vertical Boundaries?" Horace G. Lunt, of Colorado Springs, "How Can the Progress of Civil Causes be Expedited?" Henry McAllister, Jr., of Colorado Springs, "What Can be Done to Stop Lynching?"

## DELAWARE STATE BAR ASSOCIATION.

This Association is reported as having held no meeting for two years.

## BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA.

This Association is primarily a library association, and holds no meetings at which addresses are made or papers used.

## GEORGIA BAR ASSOCIATION.

The twenty-first annual session of the Georgia Bar Association was held at Warm Springs, Georgia, June 30, July 1 and 2, 1904.

The subject of President Peter W. Meldrim's address was "Respect for the Law."

A special address was delivered by Judge J. H. Lumpkin, of Atlanta, on the subject, "Problems and Progress."

The Committee on Jurisprudence and Law Reform recommended a number of changes in the statute law of the state of considerable local interest. These, after full debate, were adopted by the Association, and most of them have subsequently been passed by the General Assembly.

The Committee on Judicial Administration and Remedial Procedure reported, among other things, in favor of an increase in the salaries of the judges of the Superior Court and the justices of the Supreme Court. This committee also recommended the enactment of the Australian ballot system. The increase in the salaries of the judges has since been adopted by the legislature.

Reports were also submitted by the Committees on Legal Education and Admission to the Bar, on Grievances, on Legal Ethics, and on Interstate Law. The special committee on the proposed Court of Appeals reported the passage of the bill recommended by the Association by the Senate and a favorable report thereon by the General Judiciary Committee of the House. This bill, however, failed to reach a vote in the House at the last session of the General Assembly.

The Committee on Registration of Land Titles reported that at its request a special commission had been created, composed of members of the General Assembly and of the Association, to investigate the workings of the system in states and countries where it was in force, and that this commission was making considerable progress in its investigations. A resolution was passed directing the printing and distribution of the reports of the principal standing committees in advance of the

annual meetings of the Association, so that they can be more intelligently discussed and acted upon; also to pay the expenses of the members of the committees in attending meetings upon the call of the chairmen.

The financial condition of the Association, as reported by the treasurer, is the best in its history. The Association is steadily growing in interest and membership. The meeting was one of the largest ever held.

The following addresses and papers were read: "Admiralty Law in the United States," by T. M. Cunningham, Jr., of Savannah; "The Rule of Equality in Taxation," by Shepard Bryan, of Atlanta; "Young Lawyers and Some of the Obstacles They Encounter," by Eugene Ray, of Columbus; "The Mission of the Lawyer," by W. R. Hammond, of Atlanta. The subject, "What Further Restrictions on the Elective Franchise, if any, are Desirable in Georgia?" was discussed by Barry Wright, of Rome, and T. F. Corrigan, of Atlanta.

Memorials were read on the lives of Justices Samuel Lumpkin, H. T. Lewis and H. G. Turner, of the Supreme Court, and Judges T. A. Atkinson, Pope Barrow and W. T. Gary, of the Superior Courts.

#### BAR ASSOCIATION OF THE HAWAIIAN ISLANDS.

This Association holds quarterly meetings for purposes of business, at which, aside from routine matters, there is usually a discussion of some current question of particular interest to the Hawaiian Bar, as, for example, proposed enactments of Congress or of the territorial legislature affecting jurisdiction of courts or practice and procedure.

During the legislative session of 1903 committees of the Association did a considerable amount of effective work in framing acts to carry out the recommendations of the Chief Justice of the Supreme Court of Hawaii in his biennial report to the legislature. The proposed acts prepared by the committees were submitted to the Association at frequent special



meetings, at which they received most thorough criticism. The difficult, anomalous, legal problems which have been constantly arising since the overthrow of the Hawaiian monarchy and since annexation, under the inadequacy of existing statutes and their inadaptability to changed conditions, have made such activity on the part of the Association necessary and highly appreciated.

Aside from the business meetings, an annual dinner is given at the beginning of summer, when the terms of court are closing and the year's work is at a period. This is the occasion, in addition to the usual after-dinner speeches, of the presentation and discussion of a carefully prepared paper on some subject of special interest to lawyers.

At the dinner of June 11, 1904, David L. Withington read the leading paper, his subject being "The Old-Fashioned Lawyer." The other speakers were: W. O. Smith, the retiring president; Alfred S. Hartwell, Judge Sanford B. Dole, of the United States District Court for Hawaii; Justice Perry, of the Territorial Supreme Court; Attorney General Lorrin Andrews, A. L. C. Atkinson, secretary of the territory; Frank Andrade and Henry E. Highton.

The Association is a coherent body, due somewhat, perhaps, to the fact that seventy-seven of its total of eighty-three members reside in the city of Honolulu and can be called together on brief notice, as well as to the fact of conditions as above suggested, which constantly raise practical questions of peculiar interest to the Hawaiian Bar. The Association was organized in June, 1899.

#### ILLINOIS STATE BAR ASSOCIATION.

The twenty-eighth annual meeting was held in Bloomington on May 25 and 26, 1904.

The President's annual address was delivered by Charles L. Capen, of Bloomington. Among the subjects treated were legislation in the interest of particular classes, injunctions against trespasses and criminal acts, the crime of lynching,

public recompense to the victims of crime, the responsibility of the local community for the expense of military protection when required, and simplification of the methods of the courts.

Emlin McClain, of Des Moines, Iowa, delivered an address on "Citizenship of the United States as a Legal Status." The relation of the individual to the government as a "citizen," as recognized by the French philosophers, and as distinguished from the English view of the relation of the individual to the government merely as a "subject" was treated, and various problems arising from the extension of the sovereignty of the United States over the Philippines and other islands, were elaborately discussed.

Edwin T. Merrick, of New Orleans, delivered an address on "The Louisiana Purchase." The dramatic incidents of the French and Spanish dominations of Louisiana, the incidents of the purchase, and the adaptation of the jurisprudence of the newly acquired territory to American principles and methods, were described.

James C. Allen, of Olney, delivered an address on "The Bar of Southern Illinois Sixty Years Ago"

Thomas Dent, of Chicago, presented a memorial of Lyman Trumbull.

Much time was devoted to a discussion of the course of procedure in the Supreme Court of Illinois, which was opened by Isaac N. Bassett, of Aledo. The principal object of the discussion was to discover such methods as would enable each member of the court to examine fully the record and consider the errors assigned and briefs and argument before assigning the cause for writing the opinion.

Judge Emlin McClain, of the Supreme Court of Iowa, gave an account of the recent changes in the methods pursued by that court.

#### INDIAN TERRITORY BAR ASSOCIATION.

The fifth annual meeting was held at South McAlester on June 14 and 15, 1904.

The President's address was delivered by W. H. Kornegay, of Vinita, and discussed, as provided by the constitution, the noteworthy changes in statute law of general interest in the Indian Territory, referring mainly to the various enactments of Congress relative to the final termination of Indian tribal relations and holdings, and to the allowance of bail pending appeal in criminal cases—a measure which has long been urged upon Congress through memorials and otherwise by this Association.

The annual address was delivered by James A. Hagerman, of St. Louis, Missouri, the President of the American Bar Association, and treated of "The Building of a State"—an intensely interesting and timely discussion of a topic of the utmost importance to the residents of this territory at this time.

The most important matter before the meeting was the resolution providing for an amalgamation of this Association with the Bar Association of the sister territory and "other half" of the new state to be, Oklahoma. After much discussion the resolution was adopted and the Executive Committee was instructed to meet with the Executive Council of the Oklahoma Association and perfect such amalgamation.

This joint meeting was held at Oklahoma City September 17, 1904, the amalgamation was completed, and the first meeting of the united Association was called to be held at Shawnee, Oklahoma, December 29 and 30, 1904.

Papers were read by N. A. Gibson, of Muskogee, on "The Limitations of the Enabling Act: How Far Binding upon the People of a New State," and by W. A. Ledbetter, of Ardmore, on "The Career of the Choctaw and Chickasaw Citizenship Court."

#### STATE BAR ASSOCIATION OF INDIANA.

The eighth annual meeting was held at Fort Wayne, July 14 and 15, 1904.

The President's address was delivered by William P. Breen, of Fort Wayne, and dealt with the subject, "Divorce," sug-

gesting legislation limiting the ground of divorce and statutory provision for divorce *a mensa et thoro* in states where no such provision is made.

The annual address was delivered by Henry St. George Tucker, of Virginia, on "Civil Liberty."

The report of the Committee on Jurisprudence and Law Reform, recommending the reorganization of the circuit courts of the state into districts, was referred to a special committee of five members.

Thirty-two new members were elected.

Papers were read by Charles S. Baker, of Columbus, on the "Ethics of the Profession"; by Samuel Parker, of Plymouth, on "Criticism of Judges," and by Charles W. Smith, on the "Jury System."

A committee of five was appointed to act with a similar committee from the State Bankers' Association for the purpose of providing a law regulating private banking in Indiana.

#### IOWA STATE BAR ASSOCIATION.

The tenth annual meeting was held at Ottumwa on July 14 and 15, 1904.

George W. Wakefield, President of the Association, delivered an address on "The Necessity of Protecting the Citizen from the Great Speed of Modern Engines and Electrical Machines."

The Committee on Law Reform recommended, which recommendation, after a spirited debate, was adopted, certain restriction in marriage of persons of unsound mind. It also recommended a change in the government of cities and towns, which would place the entire management of these municipalities in the hands of three aldermen, who would be elected by the people and reasonably salaried.

The following papers were read: "How Far Are Labor Unions Liable for the Acts of Their Members?" by M. L. Temple; "The Control of Public Utilities," by William H. Bailey; "Municipal Government," by Colonel Clark.

**BAR ASSOCIATION OF THE STATE OF KANSAS.**

The twentieth annual meeting was held in Topeka January 27 and 28, 1904. About two hundred members were present.

President J. G. Slonecker delivered the opening address, as provided by the by-laws of the Association, on the subject, "The Evolution of Law."

The annual address was delivered by Governor A. B. Cummins, of Iowa, on the subject, "The Rights of Man." This address was given the evening of the first day, and was attended not only by members of the Association, but also by many citizens of Topeka. Supplemental to the entertainment by the lawyers, Governor Bailey, of Kansas, threw open the doors of his office and the executive mansion and gave Governor Cummins a neighborly reception.

No particularly important matters were reported by the committees; but the meeting was one of the largest and best ever held by the Association.

In addition to the addresses mentioned, papers were read by W. E. Higgins, of Lawrence, on "Regard for Law"; by E. V. Jones, a student graduate of the State University, on "Repeal by Implication"; by G. F. Gratton, of McPherson, on "The Responsibility of the Lawyer in the Legislature"; by G. A. Vandever, of Hutchinson, "Is the Seventh Paragraph in Subdivision of Section 18 of the Statute of Limitations Constitutional?" by R. E. Morris, of Kansas City, on "Municipal Ownership of Public Utilities," and by H. E. Ganse, of Burlington, on "The Law's Responsibility for Lawlessness."

**KENTUCKY STATE BAR ASSOCIATION.**

The third annual meeting was held in Louisville June 23 and 24, 1904.

After the address of welcome delivered by Circuit Judge Shackelford Miller, the President, Luther C. Willis, delivered his address, in which he summed up in a terse statement the work of the Association during his term of office, dwelling at

length on the encouraging feature of the great increase in membership as well as on several of the bills presented by the Association to the legislature. The bill on which he laid especial stress was the Negotiable Instruments bill, which was adopted by the legislature and is now the law of the state. This bill differs in only a few minor particulars from the bill in which the American Bar Association has taken such an interest and which is now the law in eighteen states and the District of Columbia. The other bill to which the President gave especial attention was a bill which revised the jury system of the state. Although it was passed by the legislature, it was vetoed by the governor.

An address was delivered by Judge Horace H. Lurton, of Nashville, Tennessee, of the United States Circuit Court of Appeals, on "Appellate Procedure."

The reports of the several committees showed that each committee had done its full share of work during the year. The report of the Membership Committee showed that the membership had increased from four hundred and two to four hundred and ninety-five in the past year, making an increase of ninety-three members during the year.

An instructive paper on the new Negotiable Instruments bill was read by R. W. Miller, of Richmond, which was followed by an interesting discussion of the new bill, led by C. M. Lindsey, of Louisville. Helm Bruce, of Louisville, read a paper entitled "The Law Applicable to the Use of Electricity in Modern Industrial Life," which proved to be one of the strongest addresses of the meeting. Another strong address was that of Judge Ed. C. O'Rear, of the Kentucky Court of Appeals, entitled "The Uses and Abuses of the Petition for Rehearing."

#### LOUISIANA BAR ASSOCIATION.

The annual meeting was held on February 1, 1904, at its library rooms in the Civil District Court for the parish of Orleans, and was very largely attended.

A formal address by the President was delivered, the main topic being the success attendant upon the effort of the Bar Association in causing the legislature to furnish through it and the city of New Orleans adequate funds to purchase ground and erect a courthouse necessary and proper at this time.

Charles E. Fenner, for many years an associate justice of the Supreme Court of the state, delivered a most interesting address upon "The Civil Code of Louisiana as a Democratic Institution."

Ernest T. Florance, a member of the Association, wrote an admirable article upon the revision of the laws of Louisiana, pointing out with great clearness the necessity in this advanced age of changing many of the articles of the civil code of Louisiana and of the code of practice of Louisiana, which have obtained for nearly a century.

Solomon Wolff, delivered an address upon "The Torrens System of Land Registration."

The annual reports of the secretary, treasurer and the Library Committee were duly presented and passed upon, general routine business following the addresses made and papers read.

#### MAINE STATE BAR ASSOCIATION.

The thirteenth annual meeting was held at Auburn on February 17, 1904. It was a business meeting, with no addresses and no papers.

#### MARYLAND STATE BAR ASSOCIATION.

The ninth annual meeting was held at Annapolis on April 27, 28 and 29, 1904. The President's address, by George Whitelock, of Baltimore, reviewed the legislation of 1904 in Maryland.

The report of the Committee on Legal Education in the main concurs in the recommendations found in the report for 1903 of the Committee on Legal Education of the American Bar Association, but considers the standards in that report to be

so far beyond the existing standards in this state as to make it impracticable of enforcement at the present time.

The Committee on Judicial Administration and Legal Reform reported the success of the Association in securing the passage by the legislature of 1904 of the measure providing a compensation for retired judges who attain the age of seventy years, and of an act giving a husband a statutory estate in his wife's property. There was failure of an effort to obtain legislation proposing a constitutional amendment to take from juries the right to be judges of the law in criminal cases. There was also a failure in the effort for legislation to make the recipient in bribery cases a competent witness in any prosecution against the giver or offerer of a bribe, and of an effort to provide for a commission to revise the criminal laws of the state.

There was a report by the Committee on Legal Biography.

A very exhaustive report of a special sub-committee on "The Evils of Special and Local Legislation" is a valuable contribution to the literature on this subject, which is inviting the attention of the profession of the whole country. This matter has been referred to the Standing Committee on Judicial Administration and Legal Reform for its consideration and report at the next meeting of the Association, which will be held on June 28, 29 and 30, 1905.

The following papers were read: "Lawlessness," by Moorfield Storey, of Massachusetts; "William Pinkney," by William Pinkney Whyte, of Maryland; "Former Chief Judges of the Maryland Court of Appeals," by Chief Judge James McSherry, of Maryland; "The Theory of Obligations in the Civil Law," by William Wirt Howe, of Louisiana; "The Law of Naturalization," by Henry Stockbridge, associate judge of the Supreme Bench of Baltimore.

The Association, on September 1, 1904, had four hundred and eighty-six members.



## MICHIGAN STATE BAR ASSOCIATION.

The fifteenth annual meeting was held June 7 and 8, 1904, in Representative Hall, in the Capitol, at Lansing. The eleventh meeting of the Association of Judges of Michigan was held at the same place and in the same building, and the papers and reports prepared for the judges' organization, as well as those prepared for the Association, were read before a large assembly of judges and lawyers of the state.

The address of the President, Russell C. Ostrander, of Lansing, was confined principally to matters pertaining to the welfare of the Association. His recommendation that a suitable monument be erected to the memory of Judge Isaac P. Christiancy by the lawyers of Michigan was acted upon by the appointment of a special committee to investigate and advise in regard to the matter.

The annual address was delivered by John K. Richards, United States circuit judge, Cincinnati, Ohio, on the subject, "The Northern Securities Case, with Some Review of Prior Decisions under the Anti-Trust Law."

The report of the special committee appointed to revise Article VI of the State Constitution was adopted in so far as it recommended placing justices of the peace on a salary instead of on a fee basis, and was placed on file as to the balance of the report, namely, its consideration of the subject of the establishment of an intermediate court, compensation of circuit judges, etc.

The report of the Committee on Grievances reviewed its work of the past year, and the same was accepted and filed.

The report of the Committee on Legislation and Law Reform, reporting its action in asking the Supreme Court to promulgate a rule requiring all students applying for admission to produce and file a certificate of the State Board of Law Examiners; recommending the placing of justices of the peace on a salary instead of a fee basis; recommending the passage by the legislature of the Negotiable Instruments Law, and referring the subject of divorce to the incoming committee, was adopted.

The report of the Committee on Legal Education and Admission to the Bar was in the nature of a review and a history of the legislation in this state on that subject, and was adopted.

The report of the Memorial Committee, containing memorials of the members of the Association who had died during the preceding year, was read, accepted and filed.

Papers were read as follows: A reminiscent paper on experiences relating to the Bar and jurisprudence of the state in earlier years, by Chief Justice Joseph B. Moore, of Lansing; "Expert Testimony and the Law," by Samuel T. Douglas, of Detroit; "The Scope, Uses and Value of a Special Verdict in the Trial of Civil Causes by Jury," by Judge B. J. Brown, of Menominee; "The Indeterminate Sentence Law," by Judge Alfred Wolcott, of Grand Rapids; "Railways in the Streets and Highways of Michigan," by Judge Harry A. Lockwood, of Monroe, and "Ideals in the Administration of Justice," by Mark Norris, of Grand Rapids.

A complimentary banquet was tendered the judges and members of the Association by the Ingham County Bar Association at the close of the meeting.

#### MINNESOTA STATE BAR ASSOCIATION.

The fourth annual meeting since the reorganization of the Association was held in the Council Chamber of the City Hall, in the city of Minneapolis, on April 5, 1904, and was the most successful meeting both in point of attendance and interest which the organization has enjoyed.

The address of the President, Frederick V. Brown, of Minneapolis, embraced a history of the Association, a discussion of the exalted office of the lawyer, and an urgent appeal to the members of the Association for their more energetic participation in judicial elections.

The annual address was delivered by John Lee Webster, of Omaha, Nebraska, who took as his subject, "The Constitutional Convention of 1787." The address, now published in

the proceedings of the Association, is a most interesting and original essay.

Charles Claflin Allen, of St. Louis, was introduced, and, in behalf of the Executive Committee of the Universal Congress of Lawyers and Jurists, outlined the scope of that congress, and invited the Association to appoint delegates thereto.

The Committee on Legal Education and Admission to the Bar reported progress, and asked that a new committee be appointed to devise a plan for harmonizing conditions for admission to the Bar by state examination and by the law schools, and to report to the President in time for a recommendation to the next session of the legislature.

The Committee on Legal Biography submitted memorials of members of the Bar of the state who had died during the past year.

The report of the Committee on Judicial Elections provoked the most earnest and protracted discussion of the meeting, to the end that the President was directed to appoint a committee whose duty it should be to attempt to procure the passage of such laws as will fix the salaries of the Supreme Court judges at \$7500 per annum and those of the district judges at \$5000 per annum. At present the former receive \$5000 per annum and the latter \$3500 per annum, except that the two largest counties contribute an additional \$1500 to the salaries of their district judges. Legislation was also recommended to be sought removing the nomination of judicial candidates from the operation of the present primary law, which provides for direct nomination by the voters for all judges except those of the Supreme Bench.

The Committee on Supreme Courts and Reporting submitted a report which inspired considerable discussion and resulted in certain requests and recommendations made to the reporter and the publisher. The constitution was amended so as to retain the President and Vice President of the Association on the governing board, *ex officio*, for two years after their terms expire.

## MISSOURI BAR ASSOCIATION.

The twenty-second annual meeting was held at St. Louis on September 23 and 24, 1904. The President's address, by Frank L. Schofield, of Hannibal, reviewed the federal and state legislation for the past year, and discussed the proposed amendments to the constitution of the state.

The report of the Committee on Legal Education and Admissions to the Bar recommending the appointment of state Bar examiners was unanimously adopted.

The report of the Committee on Statutory Amendments suggested several changes in the statute law. The resolution urging the appointment of a committee to revise the statutory law of the state was adopted.

Papers were read on "Uniformity of Legislation," by Amasa M. Eaton, of Rhode Island; "Dissenting Opinions," by V. H. Roberts, of Columbia; "The Federal Bankrupt Law," by Walter D. Coles, of St. Louis.

## MONTANA BAR ASSOCIATION.

The nineteenth annual meeting was held in the Federal Court room at Helena January 12, 1904.

There was an address by the retiring President, Thomas C. Marshall, of Missoula. He reported the passage by the preceding legislature of the legislation proposed by the last meeting of the Association in regard to disbarment proceedings. The main part of the address dealt with the necessity for legislative action to rectify contradictory provisions of the codes.

A committee, consisting of the President, W. F. Sanders and Judge Hiram Knowles, was appointed to draft suitable resolutions on the proposed Anglo-American Treaty of Arbitration, as suggested by Thomas Barclay.

A striking speech was made by W. F. Sanders on technicalities in the Supreme Court, especially in the construction and enforcement of rules.

On September 1, 1904, the Association held a special meeting in the United States Court room in the new federal build-

ing at Helena. The meeting was for the purpose of bidding farewell to Judge Hiram Knowles, the retiring federal judge, and of welcoming his successor, Judge William H. Hunt, and of dedicating the new court room.

A large number of lawyers were present from all parts of the state. W. F. Sanders made the principal address, introducing appropriate resolutions, which were seconded by speeches from leading lawyers from the various sections of the state. It was an interesting and impressive meeting and a fine testimonial to the high character of the retiring and incoming judges.

#### NEBRASKA STATE BAR ASSOCIATION.

The 1904 meeting of the Nebraska State Bar Association was reported in the 1903 report of the American Bar Association.

#### BAR ASSOCIATION OF THE STATE OF NEW HAMPSHIRE.

No report has been received.

#### NEW JERSEY STATE BAR ASSOCIATION.

The sixth annual meeting was held at Atlantic City on June 17 and 18, 1904.

The President's address was delivered by Vice Chancellor James J. Bergen, and consisted of a review of the judicial aspect of the lives of the deceased chief justices of New Jersey. Edward M. Shepard, of the New York Bar, delivered an address on "The Supreme Court and the Fourteenth Amendment."

Resolutions were adopted:

(1) Approving the recommendations of the committee appointed the previous year to investigate the existing method of conducting judicial sales of land, and the adoption of such plan as will tend to apprise bidders of incumbrances, and directing the committee to present a bill to the legislature to accomplish the end in view.

(2) To investigate further the method of drawing grand and petit juries.

(3) To urge an inquiry by state authority to ascertain and report to the governor and legislature—

- (a) How the system of courts can, by constitutional amendment and by legislation, be better adjusted to the demands of judicial business.
- (b) What changes in the judicial system can be made with advantage, in order to prevent the use of two or more legal proceedings to settle controversies that can be conveniently settled in one, and in order to minimize delays due to litigation or objections upon points of procedure not involving the substantive rights of the parties.
- (c) In what other respects the system of procedure can be made more simple and certain.
- (d) Whether like defects in similar judicial systems have been successfully remedied by other states and peoples; and if so, by what means?

#### NEW YORK STATE BAR ASSOCIATION.

The twenty-seventh annual meeting was held in Albany on January 19 and 20, 1904, and was presided over by John G. Milburn, President of the Association.

The subject of the President's address was "Statutory Revision and Consolidation," which was a continuation of the subject of his address last year, and he again urged that no effort be spared to secure the passage of the bill during the present session of the legislature, which was recommended by the Association at its last annual meeting, providing for the appointment of a "Board of Statutory Consolidation," which should complete the revision and consolidation of the statutes of the State of New York.

The report of the Committee on Law Reform dealt with the question of the congested condition of business in the Supreme Court of the state, and recommended as a remedy that Supreme Court justices assigned to the appellate divisions should be allowed to perform all duties of a justice, including the holding of trial courts in every department except the one to which they are assigned as appellate justices; that the constitutional

amendments heretofore passed by the legislature, providing for an increased number of judges upon the basis of population, should receive the support of the Association. The committee further presented a resolution urging that the governor be requested to call to the attention of the legislature the necessity of the passage of the bill offered by the Association providing for the creation of the "Board of Statutory Consolidation."

The bill recommended by the Association was passed during the session of the legislature for 1904 and the commission appointed pursuant to the recommendations made by the Association, consisting of Adolph J. Rodenbeck, of Rochester; Judson S. Landon, of Schenectady; William B. Hornblower and John G. Milburn, of New York, and Adelbert Moot, of Buffalo, to direct and control the revision, simplification, arrangement and consolidation of the statutes of the state. This commission afterwards organized, selecting A. J. Rodenbeck chairman and Frederick E. Wadhams, of Albany, secretary, and the work assigned to the board is now being carried on.

The report of the committee appointed to secure needed reform in the jurisdiction and practice in surrogates' courts was received, the subject discussed and the committee continued.

A communication from James Hagerman, of St. Louis, Missouri, President of the American Bar Association, relative to the Universal Congress of Lawyers and Jurists, to be held under the auspices of the Louisiana Purchase Exposition Company, was presented, and the thirty-seven delegates to represent the Association at that congress were appointed by the President.

A communication was received from the Jamestown Bar Association submitting a statement of certain accusations against Warren B. Hooker, a justice of the Supreme Court, in connection with alleged irregularities with the United States Post Office Department at Fredonia and Dunkirk, New York,

and asking the Association to take action on the communication thus submitted. After debate the subject matter was referred to the Committee on Grievances.

The annual address was delivered by John W. Foster, of Washington, District of Columbia, his subject being "What the United States Has Done for International Arbitration."

Papers were read as follows: "American Constitutional Law as Moulded by Daniel Webster," by Everett P. Wheeler, of New York; "Changed Conditions in the Practice of the Law," by Edward P. White, of Amsterdam; "Is the Surrogate's Court Fulfilling Its Purpose?" by Louis W. Marcus, of Buffalo; "Law Reporting," by Robert G. Scherer, of Albany; "Legal Aspects of the Panama Question," by Roland Craggle, of Buffalo; "Adriaen Van Der Donck, the Earliest Lawyer in New York," by Alfred L. Becker, of Buffalo; "Some Problems in Connection with International Arbitration," by William L. Penfield, Washington, District of Columbia; "Suicide and the Law," by Wilbur Larremore, of New York; "The Civil Jury," by A. Caperton Braxton, of Staunton, Virginia.

On July 1, 1904, the membership of this Association consisted of 1613 regular members and 112 honorary members; total, 1725.

#### NORTH CAROLINA BAR ASSOCIATION.

No report has been received.

#### BAR ASSOCIATION OF NORTH DAKOTA.

No report has been received.

#### OHIO STATE BAR ASSOCIATION.

The twenty-fifth annual session was held at Put-in-Bay, July 6, 7 and 8, 1904.

The President's address was delivered by Henry J. Booth, of Columbus, on "The Courts of Ohio," treating the subject



in an exhaustive manner. Reports were made by the secretary, W. H. A. Read, of Toledo, and by the treasurer, C. R. Gilmore, of Dayton.

An address was delivered by William Z. Davis, Supreme Justice of Ohio, on "The Trial Judge." The annual address was delivered by Lebbeus R. Wolfley, of St. Louis, Missouri, now attorney-general of the Philippine Islands, on "The New Philippine Judiciary." Mr. Wolfley treated his subject as one who has made it a deep study, showing the important position that Ohio, through her prominent men, including our late President, William McKinley, William H. Taft and William R. Day, has taken in perfecting the Philippine government.

Papers were read as follows:

"Uniform Taxation," by S. S. Wheeler, of Lima; "Legal Reporting and Indexing," by Emilius O. Randall, of Columbus, and a debate was had on "Municipal Ownership" between David F. Pugh, of Columbus, for the affirmative, and Joseph Wilby, of Cincinnati, for the negative.

Delegates to the meeting of the American Bar Association, and also to the Universal Congress of Lawyers and Jurists, to be held at St. Louis, Missouri, were appointed.

The most important matter that came before the meeting was the resolution introduced by J. E. Sater, of Columbus, asking the indorsement of the Association of the creation of a new federal judicial district in Ohio, which after much discussion, taking up the greater part of the session, was adopted unanimously by the Association. Another important matter was the action of the Association urging all necessary legislation to extend the terms of the Supreme Judges of Ohio to twelve years, by the appointment of a committee consisting of one member of the Association from each county in the state to assist in this work.

During the session fifty new members were elected, thereby increasing the membership to over seven hundred.

## OREGON BAR ASSOCIATION.

The fourteenth annual meeting was held in Portland, Oregon, November 29, 1904.

Judge George H. Burnett, of Salem, Oregon, presided, and delivered the President's address, treating of the legislation passed at the special session of the legislature in 1903, particularly of the tendency of the legislature to amend laws which have been passed but a short time, and with which neither the courts, the lawyers nor the people had had an opportunity to become familiar before the same were amended; also referring particularly to the legislation passed by the people under the "initiative" at the June election, 1904; one law being known as the "Local Option Law" and the other "The Direct Primary Law." Both laws were carried by very large majorities, and many questions have been raised since their passage, and a great deal of discussion had with reference to the amendment of the same by the next session of the legislature.

The annual address was delivered by Judge M. C. George upon the subject of his early recollections of the Bench and Bar of Oregon.

The most important matter before the Association was a resolution by which a special committee was appointed to arrange for a special meeting of the Association to be held in Portland, Oregon, during the summer or fall of 1905, while the Lewis and Clark Fair was being held; the resolution contemplating an invitation to the Bench and Bar of the states included in the original "Oregon Country," as well as the State of California, British Columbia and Alaska, the object being to have a great gathering of the Bench and Bar of the Pacific Coast, and a meeting which would attract attention all over the country. This resolution was adopted, and the sentiment of the meeting was very strongly and enthusiastically in favor of it.

The only legislation indorsed was a bill to appoint a board of commissioners on uniform state laws in the United States

to confer with commissioners appointed by other states and territories for the same purpose.

Judge Alfred F. Sears, Jr., read a paper on the subject of "Some Aspects of Crime and Criminal Law."

The annual banquet of the Association was made a special feature at this meeting.

#### THE PENNSYLVANIA BAR ASSOCIATION.

The tenth annual meeting was held at Cape May, New Jersey, June 28, 29 and 30, 1904.

The President's address was delivered by Nathaniel Ewing, of Uniontown, on "The Ethics of the Legal Profession."

The annual address was delivered by Henry E. Davis, of Washington, District of Columbia, the subject being "The Law Spirit; Its Source and Its Sway."

The report of William Penn Lloyd, treasurer of the Association, showed that after paying the annual expenses of the Association from June, 1903, to June, 1904, there was a balance of cash on hand of \$8781.12.

The net gain in membership during the year had been twenty-eight members, the total membership June 27, 1904, being 1095.

Reports were received from the Executive, Law Reform, Legal Education, Legal Biography and Uniformity of Legislation Committees, and from Special Committees on Revision of Laws Relative to Corporations and on Registrations of Land Titles. The Law Reform Committee proposed "An act authorizing the Courts of Common Pleas of this commonwealth to certify the evidence and enter judgment upon the whole record whenever a request for binding instructions has been reserved or declined by the trial judge; and authorizing appeals from the judgment so entered." And also "An act conferring additional jurisdiction upon the Orphans' Court, in connection with proceedings affecting lunatics, weak-minded persons or habitual drunkards." The first act with certain

amendments was recommended; the second act was recommended to the committee.

Large and valuable accessions were made to the historical collection and museum of the Association on exhibition in the law school of the University of Pennsylvania.

The Committee on Registration of Land Titles recommended further examination of the subject by the Association.

Papers were read as follows: John Marshall Gest, of Philadelphia, on "The Responsive Answer in Equity Considered as Evidence for the Defendant"; N. M. Edwards, of Williamsport, on "The Lawyer"; Louis Richards, of Reading, on "Municipal Autonomy and Code Regulations"; J. Levering Jones, of Philadelphia, on "The Pennsylvania Bar and Its Influence"; James H. Torrey, of Scranton, on "Labor and the Law."

The annual banquet was held on the evening of June 30th at the Hotel Stockton.

#### RHODE ISLAND BAR ASSOCIATION.

On April 22, 1904, the Association held a special meeting and discussed and adopted resolutions, which were ordered presented to the commission appointed by the general assembly to report a plan for the revision of the judicial system of the state, under the recently adopted amendment to the state constitution. The resolutions contained what the Association considered as fundamental essentials in the scheme of revision. This revision of the state judicial system was brought about by the Bar Association.

#### SOUTH CAROLINA BAR ASSOCIATION.

The eleventh annual meeting was held in the city of Columbia, on January 21 and 22, 1904. The President, J. E. McDonald, delivered an address upon the subject, "The Law of Evolution, and Some of Its Effects upon the Profession and the Practice of the Law."

The annual address was delivered by Leroy F. Youmans. The subject of the address was: "Evolution of American Law, and the American Lawyer."

The Committee on Jurisprudence and Law Reform presented an interesting report. Several of the recommendations of this report, after much discussion, were referred to a legislative committee with instructions to bring the matters recommended to the attention of the general assembly of the state.

The constitution of the Association was amended so as to provide for a regular standing committee on legislation. It was further provided that it shall be the duty of this committee to endeavor to secure such legislation as may from time to time be recommended by the Association.

Several of the recommendations of the Committees on Commercial and Interstate Law, Judicial Administration and Remedial Procedure, and on Education and Admission to the Bar, were discussed at length, and referred to the Legislative Committee.

At the conclusion of the business meetings the annual dinner was served at one of hotels of the city.

#### **SOUTH DAKOTA BAR ASSOCIATION.**

The fourth annual meeting was held at Redfield, December 20, 1903, and was the best meeting the Association has so far had, both in point of attendance and programme.

The address of the President, Thomas W. Sterling, of Redfield, Dean of the School of Law of the State University, was upon the subject, "Legal Education."

No annual address was made.

Papers were read as follows: "The Federal Constitutional Convention of 1787," by John E. Carland, of Sioux Falls, United States District Judge; "The Growth of the Law," by L. W. Croffot, of Aberdeen; and "The Law of Master and Servant," by T. H. Null, of Huron.

A special meeting of the Association was held at Deadwood on August 17 and 18, 1904. The attendance at this meeting

was chiefly made up of the attorneys residing in the western part of the state. The papers of Mr. Sterling upon "Legal Education" and Mr. Null upon "The Law of Master and Servant," read at the Redfield meeting, were also read at this meeting. A paper on "Appellate Procedure" was read by C. L. Wood, of Rapid City.

#### BAR ASSOCIATION OF TENNESSEE.

The twenty-third annual meeting was held at Lookout Mountain, Tennessee, on June 30 and July 1 and 2, 1904.

John E. Wells, President of the Association, died at his home, in Union City, in January, 1904. Edward T. Sanford, the first vice-president, was elected to fill out the unexpired term of Mr. Wells, and the President's address, reviewing the legislation of the past year, was delivered by him, following an address of welcome from the Chattanooga Bar by Thomas H. Cook, and a "poem of welcome" by W. G. M. Thomas.

The report of the secretary and treasurer was read by Robert Lusk, and this was followed by a very interesting report of the Committee on Obituaries, including a memorial of the late President of the Association, read by C. W. Metcalf, of Memphis, chairman of the committee.

Probably the most important report read was that of the Committee on Jurisprudence and Law Reform, made by James H. Malone, which recommended strongly the passage of an act that would restrict the right of appeal to the Supreme Court of Tennessee and relieve the pressure on this overworked court. A report was also made by the special committee appointed in 1903 on the Torrens System of Registering Deeds.

The report of the State Board of Law Examiners and Committee on Legal Education and Admission to the Bar was read by S. A. Champion, of Nashville, chairman of the board and of the committee.

The annual address was to have been delivered by Jacob McGavock Dickinson, of Chicago; subject, "The Alaskan

Boundary Case." As it was found at the last moment that Mr. Dickinson could not be present, his address was read by Judge J. W. Bonner, of Nashville.

The following papers were read: "Criminal Procedure, Its Delays and Remedies," by Judge C. J. St. John, of Bristol; "Some Incidents in the History of Tennessee's Court of Last Resort," by William L. Frierson, of Chattanooga; "Slavery in Tennessee," by J. H. Henderson, of Franklin; "A Plea for the Abolishment of the Appearance Term," by Rowan Greer, of Memphis; poem, "Fink *vs.* Evans, 11 Pickle 413," by Albert W. Gaines, of Chattanooga.

#### TEXAS BAR ASSOCIATION.

The twenty-third annual meeting was held at Houston, July 13 and 14, 1904. The President's address by T. S. Reese, of Hempstead, dealt with recent federal legislation; the proposed amendments to the state constitution; the Terrell election law and non-unanimous verdicts in civil cases.

The annual address was delivered by Judge Robert G. Street, of Galveston, on "Sovereignty." Papers were read by C. K. Bell, attorney-general of Texas, on "Certain Needed Reforms"; Edward F. Harris, of Galveston, on "Recent Noteworthy Decisions"; A. E. Wilkinson, of Austin, on "The Legal Mind"; Amos L. Beatty, of Sherman, on "Impeaching the Verdict of the Jury"; John C. Walker, of Galveston, on "The Harter Act"; W. M. Coldwell, of El Paso, on "Growth of Central Power in the United States"; Clarence H. Miller, of Austin, on "Law Making"; Judge Oscie Spear, on "The Texas Rule in Irrigation"; Thomas Shearon, of Dallas, on "The Vendor's Lien in Texas"; Lewis Fisher, of Galveston, on "Needed Amendments to the Probate Law."

A report was made by the Committee on Legal Education and Admissions to the Bar and a resolution was adopted excepting graduates of the law department of the State University from the provisions of the act appointing a board

of examiners to examine applicants for license to practice law.

STATE BAR ASSOCIATION OF UTAH.

No report has been received.

VERMONT BAR ASSOCIATION.

The twenty-sixth annual meeting was held October 25 and 26, 1904. President Wilder L. Burnap delivered an address on "The Spirit of Commercialism as a Dominant Factor of the Period." The Committee on Jurisprudence and Law Reform recommended legislation to expedite chancery proceedings. A committee of three was appointed to attend to the matter before the present session of the legislature. The Association by a very decisive vote recommended the creation of the office of attorney-general. The memorial sketches included one on the late Hiram F. Stevens, first secretary of the Vermont Bar Association, read by John H. Mimms, the present secretary.

VIRGINIA STATE BAR ASSOCIATION.

The sixteenth annual meeting was held at Hot Springs, Virginia, August 2, 3 and 4, 1904. The address of Alexander Hamilton, President, was entitled "A Plea for the Just Valuation of Facts," and contains valuable suggestions for the practitioner.

The annual address was delivered by Francis E. Baker, of Goshen, Indiana, Circuit Judge of the Seventh Circuit of the United States. Judge Baker discussed "The State Corporation as a Party in the Federal Courts." His paper contains a review of all the leading authorities on this subject, and points out the manner in which they should be reconciled and how the true principles to be deduced from them should be enforced and extended. His paper will take high rank in legal literature, and should be read by all who are interested in the law governing corporations. It is particularly commended to the



judges of the federal courts, who have to deal with the questions involved.

A paper was read by W. B. Richards, of Front Royal, fully collating the historic facts connected with the "Genesis of the Federal Judiciary System"; and R. G. Bickford, of Newport News, delivered a striking address entitled, "The American Merchant Marine—Legislation as a Factor in Its Development." Mr. Bickford's essay will be read with profit by all who are concerned in the welfare of our merchant marine, and should claim the attention of every member of Congress.

Among other matters discussed during the meeting was that of the acquisition of a permanent home for the Association; and it was

*Resolved*, That it is the sense of this Association that the old home of Chief Justice Marshall, situated in Richmond, Virginia, should be preserved intact in memory of its distinguished owner, and to this end it is advisable that this Association, if possible, purchase it; provided it can be done upon satisfactory terms, and necessary and proper arrangements can be made to take care of it in the future.

#### WASHINGTON STATE BAR ASSOCIATION.

The sixteenth annual session was held at Seattle on July 7, 8 and 9, 1904. The President's address was delivered by W. A. Peters, and embraced a general review of jurisprudence and judicial administration.

The report of the Committee on Judicial Administration and Remedial Procedure recommended, among other matters, (1) the establishment of juvenile courts; (2) separate election for judges; (3) that the supreme court have power to formulate rules with reference to the instructions of jurors; instructions to be prepared by counsel and submitted to the court before argument; copy of instructions to be given to the jury. The first recommendation was not adopted, but the Association was inclined to favor it, and appointed a committee to present it to the consideration of the legislature. The other

two propositions were adopted unanimously, and committees appointed to secure passage of laws to carry them into effect.

Other committees to report were: Legal Education and Admission to the Bar; Uniformity of State Laws, which recommended a national code commission; Commercial Law, which report called attention to the provision of the Negotiable Instruments Law relating to protest by reputable citizens, no provision being made for the establishment of the reputableness of the citizens; and the special committee on the Torrens System, which committee reported a proposed bill, but the committee was continued.

An address was made by Will H. Thompson, of Seattle, on "Legal Ethics and the 1903 Barratry Law."

Papers were read by E. C. Macdonald, of Spokane, on "Relief for Our State and Federal Courts"; Carroll B. Graves, of Ellensburg, on "The Desirability of Harmonizing Our State and Federal Statutes on Irrigation"; and on the subject, "Should this State Permit Corporations to Own and Vote Stock in Other Corporations?" Papers were read on the affirmative by Alfred Battle, Seattle; on the negative by Theodore L. Stiles, Tacoma.

On the evening of July 8th the King County Bar Association gave a banquet at the Hotel Washington to the State Bar Association, and numerous other entertainments were provided for the visiting members of the Bar.

## LIST OF BAR ASSOCIATIONS IN THE UNITED STATES.

**NOTE.**—This list has been compiled by the Secretary of the American Bar Association from replies to circulars sent out. While pains have been taken to make it as complete as possible, it is probable that some Associations have been omitted. All Associations which are purely Library Associations are intended to be omitted. In some cases the officers for former years are given where officers for 1904 are not known.

The Secretary acknowledges the courtesy of the Secretaries of various State Bar Associations in supplying the information as to local associations in their respective states.

The Secretary will be much indebted for information of any omissions and for corrections of the names of officers.

### ALABAMA.

NAME.	PRESIDENT.	SECRETARY.
<b>Alabama State Bar Association.</b>	Thomas R. Roulhac, Sheffield.	Alexander Troy, Montgomery.
<b>BIRMINGHAM BAR ASSOCIATION.</b>	John London, Birmingham.	L. J. Haley, Jr., Birmingham.
<b>MOBILE BAR ASSOCIATION.</b>	D. P. Bestor, Mobile.	William Cowley, Mobile.

### ALASKA TERRITORY.

<b>TANANA BAR ASSOCIATION.</b>	John F. Dillon, Fairbanks.	Edward B. Condon, Fairbanks.
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### ARIZONA.

<b>Bar Association of Arizona.</b>	M. A. Smith, Tucson.	Paul Renan Ingles, Phoenix.
<b>NORTHERN ARIZONA BAR ASSOCIATION.</b>	John J. Hawkins, (1903) Prescott.	J. E. Morrison, (1903) Prescott.

### ARKANSAS.

<b>Bar Association of Arkansas.</b>	Allen Hughes, Jonesboro.	Arthur Neill, Little Rock.
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## ARKANSAS—Continued.

NAME.	PRESIDENT.	SECRETARY.
FORT SMITH BAR ASSO- CIATION.	James F. Read, Fort Smith.	Lovick P. Miles, Fort Smith.

## CALIFORNIA.

California State Bar Association.	R. E. Ragland, San Francisco.	R. L. Simpson, San Francisco.
LOS ANGELES BAR ASSO- CIATION.	James A. Gibson, Los Angeles.	W. R. Hervey, Los Angeles.
OAKLAND BAR ASSOCIA- TION.	B. McFadden, (1903) Oakland.	Geo. E. DeGolia, (1903) Oakland.
SACRAMENTO BAR ASSO- CIATION.	Grove L. Johnson, Sacramento.	S. Luke Howe, Sacramento.
SAN DIEGO BAR ASSO- CIATION.	A. H. Sweet, San Diego.	Fred. O'Farrell, San Diego.
SAN DIEGO COUNTY CLUB OF THE LAWYERS' CLUB OF CALIFORNIA.	A. D. Jordan, San Diego.	Fred. O'Farrell, San Diego.
BAR ASSOCIATION OF SAN FRANCISCO.	W. S. Goodfellow, San Francisco.	George J. Martin, San Francisco.

## COLORADO.

Colorado Bar Asso- ciation.	Luther M. Goddard, Denver.	Lucius W. Hoyt, Denver.
DENVER BAR ASSOCIA- TION.	Charles W. Franklin, Denver.	James M. Lomery, Denver.
EL PASO COUNTY BAR ASSOCIATION.	Orlando B. Willcox, Colorado Springs.	George M. Irwin, Colorado Springs.
TELLER COUNTY BAR ASSOCIATION.	T. H. Thomas, Cripple Creek.	L. G. Campbell, Cripple Creek.

## CONNECTICUT.

NAME.	PRESIDENT.	SECRETARY.
BRIDGEPORT BAR ASSOCIATION.	Howard H. Knapp, Bridgeport.	Wm. H. Kelsey, Bridgeport.
HARTFORD COUNTY BAR ASSOCIATION.	Charles E. Perkins, Hartford.	William F. Henney, Hartford.

## DELAWARE.

Delaware State Bar Association.	Benjamin Nields, Wilmington.	T. Bayard Heisel, Wilmington.
KENT COUNTY BAR ASSOCIATION.	Henry R. Johnson, Dover.	A. M. Daly, Dover.
BAR ASSOCIATION OF NEW CASTLE COUNTY.	Herbert H. Ward, Wilmington.	David J. Reinhardt, Wilmington.
BAR ASSOCIATION OF SUSSEX COUNTY.	Charles F. Richards, Georgetown.	Albert F. Polk, Georgetown.

## DISTRICT OF COLUMBIA.

Bar Association of the District of Columbia.	J. H. Gordon, Washington.	John E. Laskey, Washington.
FEDERAL BAR ASSOCIATION OF D. C.	John W. Douglass, Washington.	George A. King, Washington.
PATENT LAW ASSOCIATION OF WASHINGTON.	Melville Church, Washington.	James M. Spear, Washington.

## FLORIDA.

HILLSBOROUGH COUNTY BAR ASSOCIATION	William Hunter, Tampa.	M. Henry Cohen, Tampa.
JACKSONVILLE BAR ASSOCIATION.	A. W. Cockrell, Jacksonville.	George M. Powell, Jacksonville.
KEY WEST BAR ASSOCIATION.	L. W. Bethel, Key West.	Julius Otto, Key West.
MARIANNA BAR ASSOCIATION.	W. H. Milton, Marianna.	J. C. McKinnon, Marianna.

## GEORGIA.

NAME.	PRESIDENT.	SECRETARY.
Georgia Bar Association.	A. P. Persons, Talbotton.	Orville A. Park, Macon.
ATLANTA BAR ASSOCIATION.	Jno. L. Hopkins, (1903) Atlanta.	William P. Hill, (1903) Atlanta.
AUGUSTA BAR ASSOCIATION.	J. C. C. Black, Augusta.	George T. Jackson, Augusta.
LA GRANGE BAR ASSOCIATION.	D. J. Gaffney, (1903) La Grange.	Frank Harwell, (1903) La Grange.
BAR ASSOCIATION OF THE CITY OF MACON.	Washington Dessau, Macon.	Andrew W. Lane, Macon.

## HAWAII TERRITORY.

Bar Association of the Hawaiian Islands.	A. G. M. Robertson, Honolulu.	Charles F. Clemons, Honolulu.
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## ILLINOIS.

Illinois State Bar Association.	Stephen S. Gregory, Chicago.	James H. Matheny, Springfield.
CHICAGO BAR ASSOCIATION.	Edgar A. Bancroft, Chicago.	Charles P. Abbey, Chicago.
CHICAGO LAW INSTITUTE.	J. M. Longenecker, Chicago.	Alfred E. Barr, Chicago.
THE ILLINOIS ASSOCIATION OF COUNTY AND PROBATE JUDGES.	Orrin N. Carter, Chicago.	Roland A. Russell, Bloomington.
THE ILLINOIS ASSOCIATION STATES ATTORNEYS.	Frank W. Blair, Chicago.	William V. Taft, Peoria.
THE LAW CLUB OF THE CITY OF CHICAGO.	Horace K. Tenney, Chicago.	Max Baird, Chicago.
THE PATENT LAW ASSOCIATION.	C. Clarence Poole, Chicago.	Francis A. Hopkins, Chicago.

## ILLINOIS—Continued.

NAME.	PRESIDENT.	SECRETARY.
SANGAMON COUNTY BAR ASSOCIATION.	Alfred Orendorff, Springfield.	Roy Seely, Springfield.
VERMILLION COUNTY BAR ASSOCIATION.	M. W. Thompson, Danville.	J. W. Keeslar, Danville.

## INDIAN TERRITORY.

Indian Territory Bar Association.	Jos. G. Ralls, Atoka.	F. H. Kellogg, South McAlester.
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## INDIANA.

State Bar Association of Indiana.	Addison C. Harris, Indianapolis.	Merrill Moores, Indianapolis.
ADAMS COUNTY BAR ASSOCIATION.	Robert S. Peterson, Decatur.	Clark J. Lutz, Decatur.
ALLEN COUNTY BAR ASSOCIATION.	James B. Harper, Fort Wayne.	Guy Colerick, Fort Wayne.
CLAY COUNTY BAR ASSOCIATION.	George A. Knight, Brazil.	S. Walter Lee, Brazil.
CLINTON COUNTY BAR ASSOCIATION.	Charles G. Guenther, Frankfort.	James T. Hockman, Frankfort.
DANVILLE BAR ASSOCIATION.	Thomas J. Cofer, Danville.	John McCormick, Danville.
DEARBORN COUNTY BAR ASSOCIATION.	Wm. R. Johnston, Lawrenceburg.	Warren H. Hauck, Lawrenceburg.
ELKHART COUNTY BAR ASSOCIATION.	James S. Drake, Goshen.	Martin H. Kinney, Goshen.
EVANSVILLE BAR ASSOCIATION.	Alexander Gilchrist, Evansville.	James T. Cutler, Evansville.
GRANT COUNTY BAR ASSOCIATION.	Henry J. Paulus, Marion.	Field W. Sweezey, Marion.

## INDIANA—Continued.

NAME.	PRESIDENT.	SECRETARY.
HAMILTON COUNTY BAR ASSOCIATION	Ira W. Christian, Noblesville.	Meade Vestal, Noblesville.
HOWARD COUNTY BAR ASSOCIATION.	W. C. Purdum, Kokomo.	John R. McIntosh, Kokomo.
HUNTINGTON COUNTY BAR ASSOCIATION.	Ulysses S. Lesh, Huntington.	C. K. Lucas, Huntington.
INDIANAPOLIS BAR ASSOCIATION.	Daniel Wait Howe, Indianapolis.	Ernest R. Keith, Indianapolis.
JAY COUNTY BAR ASSOCIATION.	David T. Taylor, Portland.	Frank B. Jaqua, Portland.
KNOX COUNTY BAR ASSOCIATION.	James S. Pritchett, Vincennes.	William F. Calverley, Vincennes.
LAKE COUNTY BAR ASSOCIATION.	Armanis F. Knotts, Hammond.	Charles E. Greenwald, Whiting.
MADISON COUNTY BAR ASSOCIATION.	Frank P. Foster, Anderson.	(Vacant)
MARTINSVILLE BAR ASSOCIATION.	James V. Mitchell, Martinsville.	E. Forest Branch, Martinsville.
PUTNAM COUNTY BAR ASSOCIATION.	Jonathan Birch, Greencastle.	Smith C. Matson, Greencastle.
RANDOLPH COUNTY LAW LIBRARY ASSOCIATION.	James S. Engle, Winchester.	Alonzo L. Bales, Winchester.
SHELBY COUNTY BAR ASSOCIATION.	Isaac Carter, Shelbyville.	George H. Meiks, Shelbyville.
STARKE COUNTY BAR ASSOCIATION.	(Vacant)	W. C. Pentecost, Knox.
THIRTY-FIFTH JUDICIAL CIRCUIT BAR ASSOCIATION.	Charles M. Brown, Auburn.	Will H. Williner, Garrett.



## INDIANA—Continued.

NAME.	PRESIDENT.	SECRETARY.
VERMILLION COUNTY BAR ASSOCIATION.	Martin G. Rhoads, Newport.	George D. Sunkel, Newport.
WABASH BAR ASSOCIA- TION.	Alvah Taylor, Wabash.	Thomas L. Still, Wabash.

## IOWA.

Iowa State Bar As- sociation.	George W. Wakefield, Sioux City.	Sam S. Wright, Tipton.
ADAMS COUNTY BAR AS- SOCIATION.	Frank M. Davis, Corning.	A. Ray Maxwell, Corning.
BLACKHAWK COUNTY BAR ASSOCIATION.	O. B. Courtright, Waterloo.	J. S. Tuthill, Waterloo.
BOONE COUNTY BAR AS- SOCIATION.	S. R. Dyer, Boone.	W. W. Goodykoontz, Boone.
BUCHANAN COUNTY BAR ASSOCIATION.	M. W. Harmon, Independence.	H. C. Chappell, Independence.
CALHOUN COUNTY BAR ASSOCIATION.	M. W. Frick, Rockwell City.	L. H. Fouts, Rockwell City.
CASS COUNTY BAR ASSO- CIATION.	John W. Scott, Atlantic.	W. A. Follett, Atlantic.
CEDAR COUNTY BAR AS- SOCIATION.	E. M. Brink, Tipton.	George C. Hoover, West Branch.
CERRO GORDO COUNTY BAR ASSOCIATION.	John D. Glass, Mason City.	B. C. Keeler, Mason City.
CHICKASAW COUNTY BAR ASSOCIATION.	J. H. Powers, New Hampton.	W. J. Springer, New Hampton.
CLARKE COUNTY BAR ASSOCIATION.	M. L. Temple, Osceola.	W. M. Hyland, Osceola.
CLAYTON COUNTY BAR ASSOCIATION.	James O. Crosby, Garnavillo.	B. W. Newberry, Strawberry Point.

## IOWA—Continued.

NAME.	PRESIDENT.	SECRETARY.
CLINTON COUNTY BAR ASSOCIATION.	C. W. Chase, Clinton.	A. L. Schuyler, Clinton.
DECATUR COUNTY BAR ASSOCIATION.	J. W. Harvey, Leon.	C. W. Hoffman, Leon.
DES MOINES BAR ASSOCIATION.	William H. Baily, Des Moines.	J. B. Ryan, Des Moines.
DUBUQUE COUNTY BAR ASSOCIATION.	A. P. Gibbs, Dubuque.	S. B. Lattner, Dubuque.
HAMILTON COUNTY BAR ASSOCIATION.	N. B. Hyatt, Webster City.	G. F. Tucker, Webster City.
JACKSON COUNTY BAR ASSOCIATION.	D. A. Wynkoop, Maquoketa.	E. C. Johnson, Maquoketa.
JASPER COUNTY BAR ASSOCIATION.	O. C. Meredith, Newton.	J. A. Mattern, Newton.
JEFFERSON COUNTY BAR ASSOCIATION.	Robert F. Ratcliff, Fairfield.	E. F. Simmons, Fairfield.
JOHNSON COUNTY BAR ASSOCIATION.	Charles Baker, Iowa City.	R. P. Howell, Iowa City.
JONES COUNTY BAR ASSOCIATION.	J. S. Stacy, Anamosa.	W. I. Chamberlain, Wyoming.
KOSSUTH COUNTY BAR ASSOCIATION.	E. V. Swetting, Algona.	Charles A. Cohenour, Algona.
LEE COUNTY BAR ASSOCIATION.	H. H. Trimble, Keokuk.	Hazen I. Sawyer, Keokuk.
LINN COUNTY BAR ASSOCIATION.	I. N. Whittam, Cedar Rapids.	J. W. Good, Cedar Rapids.
LOUISA COUNTY BAR ASSOCIATION.	John Hale, Wapello.	W. H. Hurley, Wapello.
LUCAS COUNTY BAR ASSOCIATION.	T. M. Stuart, Chariton.	L. B. Bartholomew, Chariton.

## IOWA—Continued.

NAME.	PRESIDENT.	SECRETARY.
MAHASKA COUNTY BAR ASSOCIATION.	J. O. Malcolm, Oskaloosa.	C. Ver Ploeg, Oskaloosa.
MONONA COUNTY BAR ASSOCIATION.	G. W. McMillen, Onawa.	A. Kindall, Onawa.
MONROE COUNTY BAR ASSOCIATION.	T. B. Perry, Albia.	D. W. Bates, Albia.
MUSCATINE COUNTY BAR ASSOCIATION.	J. Carskaddan, Muscatine.	William Hoffman, Muscatine.
OSCEOLA COUNTY BAR ASSOCIATION.	C. M. Brooks, Sibley.	John F. Glover, Sibley.
POLK COUNTY BAR ASSOCIATION.	Geo. H. Carr, Des Moines.	J. B. Ryan, Des Moines.
POTTAWATTAMIE COUNTY BAR ASSOCIATION.	William Mynster, Council Bluffs.	D. E. Stuart, Council Bluffs.
POWESHIEK COUNTY BAR ASSOCIATION.	John T. Scott, Brooklyn.	T. J. Bray, Brooklyn.
SCOTT COUNTY BAR ASSOCIATION.	C. M. Waterman, Davenport.	R. C. Ficke, Davenport.
SHELBY COUNTY BAR ASSOCIATION.	Edmund Lockwood, Harlan.	Thos. H. Smith, Harlan.
SIOUX COUNTY BAR ASSOCIATION.	William Hutchinson, Orange City.	G. W. Peltz, Orange City.
UNION COUNTY BAR ASSOCIATION.	E. F. Sullivan, Creston.	P. C. Winter, Creston.
VAN BUREN COUNTY BAR ASSOCIATION.	Alex. Brown, Keosauqua.	J. C. Calhoun, Keosauqua.
WAPELLO COUNTY BAR ASSOCIATION.	E. E. McElroy, Ottumwa.	Chas. Hall, Ottumwa.
WARREN COUNTY BAR ASSOCIATION.	H. H. McNeil, Indianola.	A. V. Proudfoot, Indianola.

## IOWA—Continued.

NAME.	PRESIDENT.	SECRETARY.
WASHINGTON COUNTY BAR ASSOCIATION.	H. M. Eicher, Washington.	C. J. Wilson, Washington.
WEBSTER COUNTY BAR ASSOCIATION.	A. N. Botsford, Fort Dodge.	Wm. T. Chantland, Fort Dodge.
WINNESHIEK COUNTY BAR ASSOCIATION.	M. Harter, Ossian.	Dan Shea, Decorah.
WOODBURY COUNTY BAR ASSOCIATION.	Craig L. Wright, Sioux City.	John R. Carter, Sioux City.
WRIGHT COUNTY BAR ASSOCIATION.	A. R. Ladd, Clarion.	J. W. McGrath, Eagle Grove.

## KANSAS.

Bar Association of the State of Kansas.	William R. Smith, Topeka.	D. A. Valentine, Topeka.
COUNCIL GROVE BAR AS- SOCIATION.	M. B. Nicholson, Council Grove.	W. J. Pirtle, Council Grove.
DOUGLAS COUNTY BAR ASSOCIATION.	W. W. Nevison, Lawrence.	Lucius H. Perkins, Lawrence.
SEDGWICK COUNTY BAR ASSOCIATION.	J. D. Houston, Wichita.	Vermilion Harris, Wichita.

## KENTUCKY.

Kentucky State Bar Association.	John S. Kelley, Bardstown.	R. A. McDowell, Louisville.
KENTON COUNTY BAR ASSOCIATION.	William A. Bryne, Covington.	Charles A. J. Walker, Covington. (Cincinnati, O.)
LOUISVILLE BAR ASSO- CIATION.	Arthur M. Rutledge, Louisville.	E. L. McDonald, Louisville.
MURRAY BAR ASSOCIA- TION.	Conn Linn, Murray.	Charles Jetton, Murray.

## LOUISIANA.

NAME.	PRESIDENT.	SECRETARY.
Louisiana Bar Association.	Bernard McCloskey, New Orleans.	W. S. Benedict, New Orleans.

## MAINE.

Maine State Bar Association.	George D. Bisbee, Rumford Falls.	Leslie C. Cornish, Augusta.
CUMBERLAND BAR ASSOCIATION.	Henry B. Cleaves, Portland.	John F. A. Merrill, Portland.
FRANKLIN COUNTY BAR ASSOCIATION.	Henry L. Whitcomb, Farmington.	Byron M. Small, Farmington.
HANCOCK COUNTY BAR ASSOCIATION.	Eugene Hale, (1903) Ellsworth.	John B. Redman, (1903) Ellsworth.
KENNEBEC BAR ASSOCIATION.	Charles F. Johnson, Waterville.	Chas. L. Andrews, Augusta.
PENOBSCOT BAR ASSOCIATION.	Franklin A. Wilson, Bangor.	Frederick H. Appleton, Bangor.
SOMERSET BAR AND LAW LIBRARY ASSOCIATION.	O. R. Bachellor, Skowhegan.	W. T. Leekins, Skowhegan.
YORK BAR ASSOCIATION.	Horace H. Burbank, Saco.	Gorham N. Weymouth, Biddeford.

## MARYLAND.

Maryland State Bar Association.	J. A. C. Bond, Westminster.	James U. Dennis, Baltimore.
BAR ASSOCIATION OF ALLEGANY COUNTY.	Albert A. Doub, Cumberland.	D. Lindley Sloan, Cumberland.
BAR ASSOCIATION OF BALTIMORE CITY.	Richard M. Venable, Baltimore.	James W. Bowers, Jr., Baltimore.
CAROLINE COUNTY LAW LIBRARY ASSOCIATION.	J. Pliny Fisher, Denton.	T. Allan Goldsborough, Denton.

## MARYLAND—Continued.

NAME.	PRESIDENT.	SECRETARY.
BAR ASSOCIATION OF CARROLL COUNTY.	James A. C. Bond, (1903) Westminster.	E. O. Grimes, Jr., (1903) Westminster.
BAR ASSOCIATION OF GARRETT COUNTY.	Gilmor S. Hamill, Oakland.	Julius C. Renninger, Oakland.
BAR ASSOCIATION OF MONTGOMERY COUNTY.	Hattersly W. Talbott, Rockville.	Philip D. Laird, Rockville.
BAR ASSOCIATION OF PRINCE GEORGE'S CO.	George C. Merrick, Upper Marlboro.	Alan Bowie, Upper Marlboro.
BAR ASSOCIATION OF WASHINGTON COUNTY.	Alexander Neill, Hagerstown.	Elias B. Hartle, Hagerstown.

## MASSACHUSETTS.

BAR ASSOCIATION OF THE CITY OF BOSTON.	Chas. P. Greenough, Boston.	William F. Wharton, Boston.
BERKSHIRE BAR ASSO- CIATION.	Edward T. Slocum, Pittsfield.	Charles L. Hibbard, Pittsfield.
ESSEX BAR ASSOCIATION.	William H. Niles, Lynn.	Alden P. White, Salem.
FALL RIVER BAR ASSO- CIATION.	Milton Reed, Fall River.	Arthur S. Phillips, Fall River.
FRANKLIN COUNTY BAR ASSOCIATION.	Samuel O. Lamb, Greenfield.	Samuel D. Conant, Greenfield.
HAMPDEN BAR ASSO- CIATION.	Charles L. Gardner, Springfield.	Robert O. Morris, Springfield.
HAMPSHIRE BAR ASSO- CIATION.	Timothy G. Spaulding, (Vacant) Northampton.	
HAVERHILL BAR ASSO- CIATION.	Henry N. Merrill, Haverhill.	Charles E. Sawyer, Haverhill.
LYNN BAR ASSOCIATION.	John W. Berry, Lynn.	Charles Leighton, Lynn.

## MASSACHUSETTS—Continued.

NAME.	PRESIDENT.	SECRETARY.
BAR ASSOCIATION OF THE COUNTY OF MIDDLESEX.	Samuel K. Hamilton, Boston.	Frank M. Forbush, Boston.
NEW BEDFORD BAR ASSOCIATION.	Charles W. Clifford, New Bedford.	Frank A. Milliken, New Bedford.
NEWBURYPORT BAR AS- SOCIATION.	J. C. M. Bayley, Newburyport.	George H. O'Connell, Newburyport.
BAR ASSOCIATION OF NORFOLK COUNTY.	Asa P. French, Boston.	Charles F. Spear, Hyde Park.
PLYMOUTH COUNTY BAR ASSOCIATION.	Benjamin W. Harris, E. Bridgewater.	Arthur Lord, Plymouth.
SALEM BAR ASSOCIATION.	Daniel E. Safford, Salem.	Joseph B. Saunders, Salem.
TAUNTON BAR ASSOCIA- TION.	Wm. S. Woods, Taunton.	Carleton F. Sanford, Taunton.

## MICHIGAN

Michigan State Bar Association.	Chester L. Collins, Bay City.	William J. Landman, Grand Rapids.
BAY COUNTY BAR ASSO- CIATION.	Edgar A. Cooley, Bay City.	Archibald McDonell, Bay City.
DETROIT BAR ASSOCIA- TION.	Wm. J. Gray, Detroit.	George B. Yerkes, Detroit.
GRAND RAPIDS BAR AS- SOCIATION.	Arthur C. Denison, Grand Rapids.	Hugh E. Wilson, Grand Rapids.
HOUGHTON COUNTY BAR ASSOCIATION.	Thos. L. Chadbourne, Houghton.	Gordon R. Campbell, Calumet.
INGHAM COUNTY BAR ASSOCIATION.	Samuel L. Kilbourne, Lansing.	Harry A. Silsbee, Lansing.
IONIA COUNTY BAR AS- SOCIATION.	Allen B. Morse, Ionia.	Wm. K. Clute, Ionia.

## MICHIGAN—Continued.

NAME.	PRESIDENT.	SECRETARY.
JACKSON COUNTY BAR ASSOCIATION.	Eugene Pringle, Jackson.	Benjamin Williams, Jackson.
LENAWEE COUNTY BAR ASSOCIATION.	Clement E. Weaver, Adrian.	Walter S. Westerman, Adrian.
MACOMB COUNTY BAR ASSOCIATION.	Dwight N. Lowell, Romeo.	Franz Kuhn, Mt. Clements.
MARQUETTE COUNTY BAR ASSOCIATION.	Dan H. Ball, Marquette.	George P. Brown, Marquette.
MUSKEGON COUNTY BAR ASSOCIATION.	Willard J. Turner, Muskegon.	Alex. Sutherland, Muskegon.
SAGINAW COUNTY BAR ASSOCIATION.	Miles J. Purcell, Saginaw.	Frank Q. Quinn, Saginaw.
WASHTENAW COUNTY BAR ASSOCIATION.	A. J. Sawyer, Ann Arbor.	Arthur Brown, Ann Arbor.

## MINNESOTA.

Minnesota State Bar Association.	Edward C. Stringer, Minneapolis.	Charles W. Farnham, St. Paul.
BLUE EARTH COUNTY BAR ASSOCIATION.	A. R. Pfair, Sr., Mankota.	Jean A. Flittie, Mankota.
MINNEAPOLIS BAR ASSOCIATION.	A. B. Choate, (1903) Minneapolis.	John T. Baxter, (1903) Minneapolis.
RAMSEY COUNTY BAR ASSOCIATION.	Oscar Hallam, St. Paul.	E. O. Wergedahl, St. Paul.
RICE COUNTY BAR ASSOCIATION.	Geo. W. Batchelder, Faribault.	A. D. Keyes, Faribault.
SEVENTH JUDICIAL DISTRICT BAR ASSOCIATION.	John W. Mason, Fergus Falls.	Jas. R. Bennett, Jr., St. Cloud.
WINONA COUNTY BAR ASSOCIATION.	Thomas Simpson, Winona.	Wm. B. Anderson, Winona.



## MISSISSIPPI.

NAME.	PRESIDENT.	SECRETARY.
ABERDEEN BAR ASSO- CIATION.	E. O. Sykes, Aberdeen.	Q. O. Eckford, Aberdeen.
ADAMS COUNTY BAR AS- SOCIATION.	W. C. Martin, Natchez.	J. A. Clinton, Natchez.
JEFFERSON COUNTY BAR ASSOCIATION.	R. W. Campbell, Fayette.	J. E. Torrey, Fayette.

## MISSOURI.

Missouri Bar Asso- ciation.	John D. Lawson, Columbia.	Robert F. Walker, St. Louis.
KANSAS CITY BAR ASSO- CIATION.	Edward P. Gates, Kansas City.	Francis A. Leach, Kansas City.
BAR ASSOCIATION OF ST. LOUIS.	John F. Lee, St. Louis.	Luther Ely Smith, St. Louis.

## MONTANA.

Montana Bar Asso- ciation.	William Scallon, Butte.	Edward C. Russel, Helena.
CASCADE COUNTY BAR ASSOCIATION.	Thomas E. Brady, Great Falls.	H. H. Ewing, Great Falls.
FLATHEAD COUNTY BAR ASSOCIATION.	G. H. Grubb, Kalispell.	D. F. Smith, Kalispell.

## NEBRASKA.

Nebraska State Bar Association.	Chas. B. Letton, Fairbury.	Roscoe Pound, Lincoln.
ADAMS COUNTY BAR AS- SOCIATION.	John M. Ragan, (1903) Hastings.	J. S. Logan, (1903) Hastings.
LANCASTER COUNTY BAR ASSOCIATION.	Henry H. Wilson, Lincoln.	Stephen L. Geisthardt, Lincoln.
OMAHA BAR ASSOCIA- TION.	Harrison C. Brome, Omaha.	Walter P. Thomas, Omaha.

## NEW HAMPSHIRE.

NAME.	PRESIDENT.	SECRETARY.
<b>Bar Association of the State of New Hampshire.</b>	Calvin Page, Portsmouth.	Arthur H. Chase, Concord.
<b>BELKNAP COUNTY BAR ASSOCIATION.</b>	Charles C. Rogers, Tilton.	Bertram Blaisdell, Meredith.
<b>CARROLL COUNTY BAR ASSOCIATION.</b>	John B. Nash, Conway.	A. M. Rumery, Ossipee.
<b>GRAFTON AND COÖS BAR ASSOCIATION.</b>	Chester B. Jordan, Lancaster.	Geo. F. Rich, Berlin.
<b>BERLIN AND GORHAM BAR ASSOCIATION.</b>	Alfred R. Evans, Gorham.	J. Howard Wiglet, Berlin.

## NEW JERSEY.

<b>New Jersey State Bar Association.</b>	Alan H. Strong, New Brunswick.	Albert C. Wall, Jersey City.
<b>ATLANTIC COUNTY BAR ASSOCIATION.</b>	Joseph Thompson, Atlantic City.	Charles C. Babcock, Atlantic City.
<b>BERGEN COUNTY BAR ASSOCIATION.</b>	David D. Zabriskie, Hackensack.	Abram DeBaun, Hackensack.
<b>CAMDEN COUNTY BAR ASSOCIATION.</b>	D. J. Pancoast, Camden.	George J. Bergen, Camden.
<b>CUMBERLAND COUNTY BAR ASSOCIATION.</b>	Wheaton Berault, Bridgeton.	George Hampton, Bridgeton.
<b>ESSEX COUNTY BAR AS- SOCIATION.</b>	William B. Guild, Newark.	Charles M. Meyers, Newark.
<b>GLOUCESTER COUNTY BAR ASSOCIATION.</b>	John S. Jessup, Woodbury.	Francis B. Davis, Woodbury.
<b>HUDSON COUNTY BAR AS- SOCIATION.</b>	John Griffin, Jersey City.	Theodore Rurode, Jersey City.

## NEW JERSEY—Continued.

NAME.	PRESIDENT.	SECRETARY.
MERCER COUNTY BAR ASSOCIATION.	John Rellstab, Trenton.	Nelson L. Petty, Trenton.
MONMOUTH COUNTY BAR ASSOCIATION.	(Vacant).	James Steen, Eatontown.
BAR ASSOCIATION OF MORRIS COUNTY.	Henry C. Pitney, Morris.	Irving E. Salmon, Morris.
PASSAIC COUNTY BAR ASSOCIATION.	George S. Hilton, Paterson.	James G. Blauvelt, Paterson.
PROSECUTORS ASSOCIATION OF NEW JERSEY.	Peter W. Stagg, (1903) Hackensack.	Nelson Y. Dungan, (1903) Somerville.
SOMERSET COUNTY BAR ASSOCIATION.	Louis H. Schenck, Somerville.	M. M. Steele, Somerville.
BAR ASSOCIATION OF UNION COUNTY.	Frank Bergen, Elizabeth.	James C. Connolly, Elizabeth.

## NEW MEXICO TERRITORY.

New Mexico Bar Association.	A. H. Harlee, (1903) Silver City.	Edward L. Bartlett, (1903) Santa Fé.
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## NEW YORK.

New York State Bar Association.	Richard L. Hand, Elizabethtown.	Frederick E. Wadhams, Albany.
ALBANY COUNTY BAR ASSOCIATION.	William P. Rudd, Albany.	Jacob C. E. Scott, Albany.
AMSTERDAM BAR ASSOCIATION.	Charles S. Nisbet, Amsterdam.	Lawrence A. Serviss, Amsterdam.
BROOKLYN BAR ASSOCIATION.	James D. Bell, Brooklyn.	Albert L. Perry, Brooklyn.
CATTARAUGUS COUNTY BAR ASSOCIATION.	Charles S. Cary, Olean.	George W. Cole, Salamanca.
DELAWARE COUNTY BAR ASSOCIATION.	James R. Baumes, Sidney.	Marion M. Palmer, Delhi.

## NEW YORK—Continued.

NAME.	PRESIDENT.	SECRETARY.
ERIE COUNTY BAR ASSOCIATION.	James L. Quackenbush, Buffalo.	Louis L. Babcock, Buffalo.
BAR ASSOCIATION OF THE CITY OF GLOVERSVILLE.	William C. Mills, Gloversville.	Jeremiah Wood, Gloversville.
GREENE COUNTY BAR ASSOCIATION.	Emory A. Chase, Catskill.	Jesse W. Olney, Catskill.
HERKIMER COUNTY BAR ASSOCIATION.	Charles Bell, Herkimer.	Rush F. Lewis, Little Falls.
BAR ASSOCIATION OF THE CITY OF JAMESTOWN.	Frank W. Stevens, Jamestown.	Arthur W. Kettle, Jamestown.
JEFFERSON COUNTY BAR ASSOCIATION.	(Vacant)	Loren E. Harter, Watertown.
MADISON COUNTY BAR ASSOCIATION.	Gerrit A. Forbes, Canastota.	W. E. Lounsbury, Morrisville.
NASSAU COUNTY BAR ASSOCIATION.	John B. C. Tappen, Glen Cove.	William Clark Roe, Thomaston.
ASS'N OF THE BAR OF THE CITY OF NEW YORK.	Elihu Root, New York.	Silas B. Brownell, New York.
ONONDAGA COUNTY BAR ASSOCIATION.	Theodore E. Hancock, Syracuse.	Ernest I. Edgcomb, Syracuse.
OSWEGO COUNTY BAR ASSOCIATION.	Wardwell G. Robinson, Oswego.	Frank J. McNamara, Oswego.
QUEENS COUNTY BAR ASSOCIATION.	Harrison S. Moore, Flushing.	Morris L. Strauss, College Point.
ROCHESTER BAR ASSOCIATION.	Albert H. Harris, Rochester.	James R. Davy, Rochester.
ROCKLAND COUNTY BAR ASSOCIATION.	Abram A. Demarest, Nyack.	George A. Wyre, Nyack.

## NEW YORK—Continued.

NAME.	PRESIDENT.	SECRETARY.
ST. LAWRENCE COUNTY BAR ASSOCIATION.	A. X. Parker, Potsdam.	George H. Bowers, Canton.
SCHENECTADY COUNTY BAR ASSOCIATION.	Samuel W. Jackson, Schenectady.	Marvin H. Strong, Schenectady.
STEUBEN COUNTY BAR ASSOCIATION.	John F. Little, Bath.	Henry V. Pratt, Wayland.
ULSTER COUNTY BAR ASSOCIATION.	Howard Chipp, Kingston.	Roscoe Irwin, Kingston.
WAYNE COUNTY BAR ASSOCIATION.	Samuel B. McIntyre, Palmyra.	Clyde W. Knapp, Lyons.
WESTCHESTER COUNTY BAR ASSOCIATION.	J. M. Wainwright, Rye.	Anson Baldwin, Jr., White Plains.
YATES COUNTY BAR AS- SOCIATION.	John H. Butler, Penn Yan.	H. B. Harpending, Dundee.

## NORTH CAROLINA.

North Carolina Bar Association.	Thomas S. Kenan, Raleigh.	J. Crawford Biggs, Durham.
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## NORTH DAKOTA.

Bar Association of North Dakota.	H. A. Libby, Park River.	W. H. Thomas, Leeds.
BARNES COUNTY BAR ASSOCIATION.	Herman Winterer, Valley City.	Martin Remmen, Valley City.
CASS COUNTY BAR AS- SOCIATION.	E. H. Smith, Fargo.	W. S. Stambaugh, Fargo.
GRAND FORKS COUNTY BAR ASSOCIATION.	James H. Bosard, Grand Forks.	Tracy R. Bangs, Grand Forks.
BAR ASSOCIATION OF THE SECOND JUDICIAL DIS- TRICT OF NORTH DAKOTA.	John Burke, Devil's Lake.	W. H. Thomas, Leeds.

## OHIO.

NAME.	PRESIDENT.	SECRETARY.
Ohio State Bar Association.	James O. Troup, Bowling Green.	Edward B. McCarter, Columbus.
AKRON BAR ASSOCIATION.	Orlando Wilcox, Akron.	T. E. Raley, Akron.
ALLEN COUNTY BAR ASSOCIATION.	John W. Roby, Lima.	James J. Weadock, Lima.
ASHLAND COUNTY BAR ASSOCIATION.	R. M. Campbell, Ashland.	F. N. Patterson, Ashland.
ATHENS COUNTY BAR ASSOCIATION.	E. D. Sayre, Athens.	I. M. Foster, Athens.
AUGLAIZE COUNTY LAW LIBRARY AND BAR ASSOCIATION.	L. N. Blume, Wapakoneta.	F. M. Horn, Wapakoneta.
BUTLER COUNTY BAR ASSOCIATION.	W. H. Harr, Hamilton.	Robert J. Shank, Hamilton.
CARROLL COUNTY BAR ASSOCIATION.	Robert E. McDonald, Carrollton.	J. H. Blyth, Carrollton.
LAW AND LIBRARY ASSOCIATION OF CHILLICOTHE.	R. R. Freeman, Chillicothe.	Frank P. Hinton, Chillicothe.
CLARK COUNTY BAR ASSOCIATION.	J. W. Keifer, (1903) Springfield.	E. E. Ballard, (1903) Springfield.
CLEVELAND BAR ASSOCIATION.	(Vacant)	T. H. Bushnell, Cleveland.
COLUMBIANA COUNTY BAR ASSOCIATION, SOUTHERN.	P. M. Smith, Wellsville.	Walter B. Hill, East Liverpool.
COSHOCTON COUNTY BAR ASSOCIATION.	S. H. Nichols, (1903) Coshocton.	L. J. McDowell, (1903) Coshocton.
CRAWFORD COUNTY BAR ASSOCIATION.	A. Wickham, (1903) Bucyrus.	Charles F. Schaber, (1903) Bucyrus.

## OHIO—Continued.

NAME.	PRESIDENT.	SECRETARY.
DELAWARE COUNTY LAW LIBRARY ASSOCIATION.	F. A. Owen, Delaware.	Harry W. Crist, Delaware.
ERIE COUNTY BAR ASSO- CIATION.	H. L. Peeke, Sandusky.	C. H. Cramer, Sandusky.
FAYETTE COUNTY BAR ASSOCIATION.	Joseph Hidy, (1903) Washington, C. H.	R. G. Allen, (1903) Washington, C. H.
FRANKLIN COUNTY BAR ASSOCIATION.	J. E. Sater, Columbus.	C. M. Vorhees, Columbus.
FULTON COUNTY BAR AS- SOCIATION.	H. H. Hann, (1903) Wauseon.	A. P. Biddle, (1903) Wauseon.
GALLIA COUNTY BAR AS- SOCIATION.	Chas. H. D. Summers, Gallipolia.	T. E. Bradbury, Gallipolia.
HAMILTON COUNTY BAR ASSOCIATION.	Moses F. Wilson, (1903) Cincinnati.	Daniel Wilson, (1903) Cincinnati.
HANCOCK COUNTY BAR ASSOCIATION.	James A. Bope, Findlay.	John E. Priddy, Findlay.
HARRISON COUNTY BAR ASSOCIATION.	D. Cunningham, Cadiz.	William T. Perry, Cadiz.
HENRY COUNTY BAR ASSOCIATION.	Martin Knupp, Jr., Napoleon.	James P. Ragan, Napoleon.
HURON COUNTY BAR AS- SOCIATION.	G. T. Thomas, Norwalk.	A. V. Andrews, Norwalk.
JEFFERSON COUNTY BAR ASSOCIATION.	E. E. Erskine, (1903) Steubenville.	W. C. Taylor, (1903) Steubenville.
KNOX COUNTY BAR AS- SOCIATION.	H. H. Greer, Mt. Vernon.	W. E. Grant, Mt. Vernon.
LAKE COUNTY BAR AS- SOCIATION.	G. N. Tuttle, Painesville.	Elbert F. Blakely, Painesville.
LICKING COUNTY BAR ASSOCIATION.	J. M. Dennis, Newark.	C. W. Seward, Newark.

## OHIO—Continued.

NAME.	PRESIDENT.	SECRETARY.
LOGAN COUNTY BAR ASSOCIATION.	W. S. Blum, (1903) Bellefontaine.	John C. Hover, (1903) Bellefontaine.
LORAIN COUNTY BAR ASSOCIATION.	Chas. W. Johnston, (1903) Elyria.	H. W. Ingersoll, (1903) Elyria.
LUCAS COUNTY BAR ASSOCIATION.	E. H. Rhoades, Toledo.	F. B. Willard, Toledo.
MADISON COUNTY BAR ASSOCIATION.	R. H. McCloud, (1903) London.	Guy Underwood, (1903) London.
MAHONING COUNTY BAR ASSOCIATION.	Thos. W. Sanderson, Youngstown.	M. C. McNabb, Youngstown.
MARION COUNTY BAR ASSOCIATION.	William Z. Davis, Marion.	William E. Scofield, Marion.
MERCER COUNTY BAR ASSOCIATION.	T. J. Godfrey, Celina.	C. S. Younger, Celina.
MIAMI COUNTY BAR ASSOCIATION.	M. H. Jones, Piqua.	F. C. Goodrich, Troy.
MONTGOMERY COUNTY BAR ASSOCIATION.	E. P. Matthews, Dayton.	R. G. Corwin, Dayton.
PAULDING COUNTY BAR ASSOCIATION.	W. H. Phillips, Paulding.	O. W. Dossart, Paulding.
PICKAWAY COUNTY BAR ASSOCIATION.	H. P. Folsom, (1903) Circleville.	C. C. Chapplear, (1903) Circleville.
PORTAGE COUNTY BAR ASSOCIATION.	R. S. Webb, (1903) Garrettsville.	G. F. Douthitt, (1903) Ravenna.
PREBLE COUNTY BAR AND LAW LIBRARY ASSOCIATION.	Elam Fisher, Eaton.	Edith Hart, Eaton.
PUTNAM COUNTY BAR ASSOCIATION.	J. J. Moore, Ottawa.	J. P. Leisure, Ottawa.
RICHLAND COUNTY BAR ASSOCIATION.	S. G. Cummings, Mansfield.	Jesse E. LaDow, Mansfield.



## OHIO—Continued.

NAME.	PRESIDENT.	SECRETARY.
SANDUSKY COUNTY BAR ASSOCIATION.	Thomas P. Finefrock, Fremont.	Basil Meek, Fremont.
SCIOTO COUNTY BAR ASSOCIATION.	George O. Newman, (1903) Portsmouth.	Harry W. Miller, (1903) Portsmouth.
SENECA COUNTY BAR ASSOCIATION.	N. L. Brewer, Tiffin.	Milton Saylor, Tiffin.
SHELBY COUNTY BAR ASSOCIATION.	Sinclair J. Hatfield, Sidney.	Andrew J. Hess, Sidney.
STARK COUNTY BAR ASSOCIATION.	James J. Clark, Canton.	Atlee Pomerene, Canton.
TRUMBULL COUNTY BAR ASSOCIATION.	H. E. Stewart, Warren.	C. M. Wilkins, Warren.
UNION COUNTY BAR ASSOCIATION.	Leonidas Piper, Marysville.	J. H. Kinkade, Marysville.
VINTON COUNTY BAR ASSOCIATION.	J. M. McGillvray, (1903) McArthur.	H. W. Coultrap, (1903) McArthur.
WASHINGTON COUNTY BAR ASSOCIATION.	A. D. Follett, Marietta.	R. A. Underwood, Marietta.
WARREN COUNTY BAR ASSOCIATION.	J. A. Runyan, Lebanon.	George W. Stanley, Lebanon.
WILLIAMS COUNTY BAR ASSOCIATION.	C. A. Bowersox, Bryan.	John B. White, Bryan.

## OREGON.

Oregon Bar Association.	Alfred F. Sears, Jr., Salem.	Robert Treat Platt, Portland.
CLACKAMAS COUNTY BAR ASSOCIATION.	Gordon E. Hayes, Oregon City.	W. S. U'Ren, Oregon City.
MARION COUNTY BAR ASSOCIATION.	F. T. Wrightman, Salem.	W. E. Richardson, Salem.

## PENNSYLVANIA.

NAME.	PRESIDENT.	SECRETARY.
<b>Pennsylvania Bar Association.</b>	Henry C. Niles, York.	William H. Staake, Philadelphia.
<b>ADAMS COUNTY BAR ASSOCIATION.</b>	Wm. McClean, Gettysburg.	W. Clarence Sheely, Gettysburg.
<b>ALLEGHENY COUNTY BAR ASSOCIATION.</b>	Thomas Herriott, Pittsburg.	Harry G. Tinker, Pittsburg.
<b>ARMSTRONG COUNTY BAR ASSOCIATION.</b>	M. F. Leason, Kittanning.	Floy C. Jones, Kittanning.
<b>LAW ASSOCIATION OF BEAVER COUNTY</b>	David A. Nelson, Beaver.	W. A. McConnel, Beaver.
<b>BERKS COUNTY BAR ASSOCIATION.</b>	Jacob S. Livingood, Reading.	Thomas K. Leidy, Reading.
<b>BLAIR COUNTY BAR ASSOCIATION.</b>	Adie H. Stevens, (1903) Tyrone.	Henry A. McFadden, (1903) Hollidaysburg.
<b>BRADFORD COUNTY BAR ASSOCIATION.</b>	R. A. Mercur, Towanda.	Stephen H. Smith, Towanda.
<b>BUCKS COUNTY BAR ASSOCIATION.</b>	Harman Yerkes, Doylestown.	Harvey S. Kiser, Doylestown.
<b>BUTLER COUNTY BAR ASSOCIATION.</b>	J. D. McJunkin, Butler.	J. D. Marshall, Butler.
<b>CAMBRIA BAR ASSOCIATION.</b>	W. Horace Rose, Johnstown.	H. H. Myers, Ebensburg.
<b>CAMERON COUNTY BAR ASSOCIATION.</b>	J. C. Johnson, Emporium.	C. W. Shaffer, Emporium.
<b>CARBON COUNTY BAR ASSOCIATION.</b>	Edw. H. Mulhearn, Mauch Chunk.	Frank P. Sharkey, Mauch Chunk.
<b>CENTRE COUNTY BAR ASSOCIATION.</b>	John G. Love, Bellefonte.	M. I. Gardner, Bellefonte.
<b>CHESTER COUNTY LAW AND MISCELLANEOUS LIBRARY ASSOCIATION.</b>	William M. Hayes, West Chester.	Thomas Lack, West Chester.

## PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
CLARION BAR ASSOCIATION.	David Lawson, Clarion.	W. D. Burns, Clarion.
CLEARFIELD COUNTY LAW ASSOCIATION.	Cyrus Gordon, Clearfield.	Benjamin F. Chase, Clearfield.
CLEARFIELD LAW LIBRARY ASSOCIATION.	Allison O. Smith, Clearfield.	Benjamin F. Chase, Clearfield.
CLINTON COUNTY BAR ASSOCIATION.	C. A. Mayer, Lock Haven.	E. P. Geary, Lock Haven.
COLUMBIA COUNTY BAR ASSOCIATION.	John G. Freeze, Bloomsburg.	George E. Elwell, Bloomsburg.
CRAWFORD COUNTY BAR ASSOCIATION.	Manley O. Brown, Meadville.	W. S. Smith, Meadville.
CUMBERLAND COUNTY BAR ASSOCIATION.	Robt. M. Henderson, (1903) Carlisle.	Conrad Hambleton, (1903) Carlisle.
DAUPHIN COUNTY BAR ASSOCIATION.	M. W. Jacobs, Harrisburg.	William M. Hargest, Harrisburg.
DELAWARE COUNTY BAR ASSOCIATION.	Geo. E. Darlington, Media.	Garnett Pendleton, Chester.
ELK COUNTY BAR ASSOCIATION.	Rufus Lucore, Ridgway.	Eugene H. Baird, Ridgway.
ERIE COUNTY BAR ASSOCIATION.	George A. Allen, Erie.	W. S. Carroll, Erie.
FAYETTE COUNTY BAR ASSOCIATION.	A. C. Hagan, Uniontown.	George Patterson, Uniontown.
FOREST BAR ASSOCIATION.	Samuel D. Irwin, Tionesta.	T. F. Ritchey, Tionesta.
FRANKLIN COUNTY BAR ASSOCIATION.	D. Watson Rowe, Chambersburg.	Loren A. Culp, Chambersburg.
FULTON COUNTY BAR ASSOCIATION.	J. Nelson Sipes, McConnellsburg.	W. Scott Alexander, McConnellsburg.

## PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
HUNTINGDON BAR ASSO- CIATION.	J. R. Simpson, Huntingdon.	Jas. S. Woods, Huntingdon.
INDIANA COUNTY LAW ASSOCIATION.	J. N. Banks, (1903) Indiana.	S. J. Telford, (1903) Indiana.
JEFFERSON COUNTY BAR ASSOCIATION.	E. H. Clark, Brookville.	S. E. Irvin, Brookville.
JUNIATA COUNTY BAR ASSOCIATION.	B. F. Burchfield, Mifflintown.	F. M. M. Pennell, Mifflintown.
LACKAWANNA LAW AND LIBRARY ASSOCIATION.	Samuel B. Price, Scranton.	Herman Osthaus, Scranton.
LANCASTER BAR ASSO- CIATION.	H. M. North, Columbia.	John W. Appel, Lancaster.
LAWRENCE COUNTY BAR ASSOCIATION.	James M. Martin, Newcastle.	Charles H. Young, Newcastle.
LEBANON COUNTY BAR ASSOCIATION.	Thomas H. Capp, Lebanon.	Charles M. Zerbe, Lebanon.
LEHIGH COUNTY BAR ASSOCIATION.	Arthur G. DeWalt, Allentown.	Frank Jacobs, Allentown.
LYCOMING LAW ASSOCIA- TION.	C. La Rue Munson, Williamsport.	Charles J. Reilly, Williamsport.
McKEAN COUNTY BAR ASSOCIATION.	Edwin L. Keenan, Smethport.	Guy B. Mayo, Smethport.
MERCER COUNTY BAR ASSOCIATION.	S. R. Mason, (1903) Mercer.	J. C. Miller, (1903) Mercer.
MIFFLIN COUNTY BAR ASSOCIATION.	David W. Woods, Lewistown.	Michael M. McLaughlin, Lewistown.
MONTGOMERY COUNTY BAR ASSOCIATION.	James Boyd, Norristown.	Wm. F. Dannehower, Norristown.
NORTHAMPTON COUNTY BAR ASSOCIATION.	H. J. Steele, Easton.	Clarence Beck, Easton.

## PENNSYLVANIA—Continued.

NAME	PRESIDENT.	SECRETARY.
NORTHUMBERLAND COUNTY LAW ASSO- CIATION.	W. H. M. Oram, Shamokin.	Harry S. Knight, Sunbury.
PERRY COUNTY BAR AS- SOCIATION.	W. N. Seibert, New Bloomfield.	James M. Barnett, New Bloomfield.
LAW ASSOCIATION OF PHILADELPHIA.	Samuel Dickson, Philadelphia.	William C. Ferguson, Philadelphia.
LAWYERS' CLUB OF PHILADELPHIA.	Francis Shunk Brown, Philadelphia.	Emanuel Furth, Philadelphia.
POTTER COUNTY BAR AS- SOCIATION.	A. G. Olmsted, Coudersport.	A. N. Crandell, Coudersport.
LAW ASSOCIATION OF SCHUYLKILL COUNTY	Guy E. Farquhar, Pottsville.	Edmund D. Smith, Pottsville.
SNYDER COUNTY BAR ASSOCIATION.	A. W. Potter, Selin's Grove.	Jay G. Weiser, Middleburg.
SOMERSET COUNTY BAR ASSOCIATION.	A. H. Coffroth, Somerset.	A. C. Holbert, Somerset.
SULLIVAN COUNTY BAR ASSOCIATION.	Thomas J. Ingham, La Porte.	W. P. Shoemaker, La Porte.
SUSQUEHANNA COUNTY LEGAL ASSOCIATION.	William M. Post, Montrose.	H. A. Denney, Montrose.
TIOGA COUNTY BAR AS- SOCIATION.	S. F. Channell, Wellsboro.	R. K. Young, Wellsboro.
UNION COUNTY BAR AS- SOCIATION.	J. C. Bucher, Lewisburg.	Andrew A. Leiser, Jr., Lewisburg.
VENANGO COUNTY BAR ASSOCIATION.	James D. Hancock, Franklin.	N. F. Osmer, Franklin.
WARREN COUNTY BAR ASSOCIATION.	W. W. Wilbur, Warren.	C. E. Bordwell, Warren.
WASHINGTON BAR ASSO- CIATION.	Norman E. Clark, Washington.	W. A. H. McIlvaine, Washington.

## PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
WAYNE BAR ASSOCIATION.	Henry Wilson, Honesdale.	R. M. Stocker, Honesdale.
WAYNESBURG BAR ASSOCIATION.	J. B. Donley, Waynesburg.	James J. Purman, Waynesburg.
WESTMORELAND LAW ASSOCIATION.	D. S. Atkinson, Greensburg.	J. E. B. Cunningham, Greensburg.
WILKES BARRE LAW AND LIBRARY ASSOCIATION.	Alex. Farnham, Wilkes Barre.	Joseph D. Coons, Wilkes Barre
WYOMING COUNTY BAR ASSOCIATION.	W. E. Little, Tunkhannock.	H. Stanley Harding, Tunkhannock.
YORK COUNTY BAR ASSOCIATION.	George S. Schmidt, York.	John L. Rouse, York.

## RHODE ISLAND.

The Rhode Island Bar Association.	Francis Colwell, Providence.	Wm. A. Morgan, Providence.
PROVIDENCE BAR CLUB.	Dexter B. Potter, Providence.	Lorin M. Cook, Providence.

## SOUTH CAROLINA.

South Carolina Bar Association.	Robert W. Shand, Columbia.	Hunter A. Gibbes, Columbia.
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## SOUTH DAKOTA.

South Dakota Bar Association.	E. C. Ericson, Elk Point.	Jno. H. Voorhees, Sioux Falls.
BEADLE COUNTY BAR ASSOCIATION.	A. W. Burt, (1903) Huron.	(Appointed at meetings)
BROWN COUNTY BAR ASSOCIATION.	J. H. Hauser, Aberdeen.	Charles M. Stevens, Aberdeen.
DAVISON COUNTY BAR ASSOCIATION.	J. L. Hannett, Mitchell.	Herbert E. Hitchcock, Mitchell.

## SOUTH DAKOTA—Continued.

NAME.	PRESIDENT.	SECRETARY.
MINNEHAHA COUNTY BAR ASSOCIATION.	J. W. Boyce, Sioux Falls.	Jno. H. Voorhees, Sioux Falls.

## TENNESSEE.

Bar Association of Tennessee.	J. H. Henderson, Franklin.	Robert Lusk, Nashville.
CHATTANOOGA BAR AND LAW LIBRARY AS- SOCIATION.	A. W. Gaines, Chattanooga.	C. W. Rankin, Chattanooga.
FRANKLIN COUNTY BAR ASSOCIATION.	George E. Banks, Winchester.	Dick Taylor, Winchester.
LEWISBURG BAR ASSO- CIATION.	J. L. Marshall, Lewisburg.	W. M. Carter, Lewisburg.
MEMPHIS BAR AND LAW LIBRARY ASSOCIATION.	Wm. M. Randolph, Memphis.	A. B. Pitman, Memphis.
MURFREESBORO BAR AS- SOCIATION.	John E. Richardson, Murfreesboro.	Jesse W. Sparks, Murfreesboro.

## TEXAS.

Texas Bar Associa- tion.	H. C. Carter, San Antonio.	A. E. Wilkinson, Austin.
AUSTIN BAR ASSOCIA- TION.	John Dowell, Austin.	J. W. Maxwell, Austin.

## UTAH.

State Bar Associa- tion of Utah.	Parley L. Williams, Salt Lake City.	J. Walcott Thompson, Salt Lake City.
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## VERMONT.

Vermont Bar Asso- ciation.	William W. Stickney, Burlington.	John H. Mimms, St. Albans.
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## VIRGINIA.

NAME.	PRESIDENT.	SECRETARY.
<b>Virginia State Bar Association.</b>	Alfred P. Thom, Norfolk.	Eugene C. Massie, Richmond.
<b>DANVILLE BAR ASSOCIATION.</b>	(Vacant)	Julian Meade, Danville.
<b>LEE COUNTY BAR ASSOCIATION.</b>	C. T. Duncan, Jonesville.	L. T. Hyatt, Jonesville.
<b>NEWPORT NEWS BAR ASSOCIATION.</b>	R. G. Bickford, Newport News.	W. C. Stuart, Newport News.
<b>NORFOLK AND PORTSMOUTH BAR ASSOCIATION.</b>	William H. Stewart, Portsmouth.	E. R. F. Wells, Norfolk.
<b>BAR ASSOCIATION OF THE CITY OF RICHMOND.</b>	William A. Moncure, Richmond.	John Howard, Jr., Richmond.
<b>BAR ASSOCIATION OF ROANOKE CITY.</b>	C. A. McHugh, Roanoke.	A. B. Antrim, Roanoke.

## WASHINGTON.

<b>Washington State Bar Association.</b>	Edward Whitson, North Yakima.	C. Will Shaffer, Olympia.
<b>KING COUNTY BAR ASSOCIATION.</b>	Orange Jacobs, Seattle.	John Arthur, Seattle.
<b>PIERCE COUNTY BAR ASSOCIATION.</b>	Theodore L. Stiles, Tacoma.	James M. Harris, Tacoma.
<b>SKAGIT COUNTY BAR ASSOCIATION.</b>	J. E. Shranger, Mt. Vernon.	E. P. Barker, Mt. Vernon.
<b>SNOHOMISH COUNTY BAR ASSOCIATION.</b>	B. E. Padgett, (1903) Everett.	E. W. Bundy, (1903) Everett.
<b>BAR ASSOCIATION OF SPOKANE COUNTY.</b>	A. G. Avery, Spokane.	Frederick W. Dewart, Spokane.
<b>THURSTON COUNTY BAR ASSOCIATION.</b>	T. N. Allen, Olympia.	Chas. D. King, Olympia.



## WASHINGTON—Continued.

NAME.	PRESIDENT.	SECRETARY.
WALLA WALLA BAR ASSOCIATION.	C. C. Gose, Walla Walla.	T. A. Paul, Walla Walla.
WHATCOM COUNTY BAR ASSOCIATION.	H. A. Fairchild, (1903) Whatcom.	Lin H. Hadley, (1903) New Whatcom.
WHITMAN COUNTY BAR ASSOCIATION.	Thomas Neill, Colfax.	H. M. Love, Colfax.

## WEST VIRGINIA.

West Virginia Bar Association.	W. W. Brannon, Weston.	Nelson C. Hubbard, Wheeling.
FAYETTE COUNTY BAR ASSOCIATION.	C. W. Dillon, Fayetteville.	R. T. Hubard, Fayetteville.
LEWIS COUNTY BAR ASSOCIATION.	W. W. Brannon, (1903) Weston.	W. B. McGary, (1903) Weston.
MARION COUNTY BAR ASSOCIATION.	Wm. S. Haymond, Fairmont.	W. H. Conaway, Fairmont.
MARSHALL COUNTY BAR ASSOCIATION.	J. C. Simpson, Moundeville.	A. L. Hooton, Moundeville.
MONONGALIA COUNTY BAR ASSOCIATION.	George C. Baker, Morgantown.	John Shriver, Morgantown.
OHIO COUNTY BAR ASSOCIATION.	T. S. Riley, Wheeling.	J. R. Naylor, Wheeling.
TUCKER COUNTY BAR ASSOCIATION,	James P. Scott, (1903) Parsons.	S. M. Hironymous, (1903) Davis.
UPSHUR COUNTY BAR ASSOCIATION.	A. M. Poundstone, Buckhannon.	W. B. Nutter, Buckhannon.
WETZEL COUNTY BAR ASSOCIATION.	Wm. McG. Hall, New Martinsville.	Lloyd V. McIntire, New Martinsville.
WOOD COUNTY BAR ASSOCIATION.	C. D. Merrick, (1903) Parkersburg.	E. R. Kingsley, (1903) Parkersburg.

938 LIST OF BAR ASSOCIATIONS IN THE UNITED STATES.

WISCONSIN.

NAME.	PRESIDENT.	SECRETARY.
State Bar Association of Wisconsin.	A. A. Jackson, Janesville.	Cornelius I. Haring, Milwaukee.
DANE COUNTY LEGAL ASSOCIATION.	Burr W. Jones, Madison.	John A. Aylward, Madison.
EAU CLAIRE COUNTY BAR ASSOCIATION.	Ira B. Bradford, Augusta.	F. A. Farr, Eau Claire.
LA CROSSE BAR ASSOCIATION.	Benjamin F. Bryant, La Crosse.	John Brindley, La Crosse.
MILWAUKEE BAR ASSOCIATION.	Julius E. Roehr, Milwaukee.	John J. Maher, Milwaukee.
ROCK COUNTY BAR ASSOCIATION.	William Smith, Janesville.	Arthur M. Fisher, Janesville.
WAUPACA COUNTY BAR ASSOCIATION.	F. M. Guernsey, Clintonville.	Irving P. Lord, Waupaca.
WINNEBAGO COUNTY BAR ASSOCIATION.	Charles Barber, (1903) Oshkosh.	A. J. Barber, (1903) Oshkosh.

## MEMORANDUM OF SUBJECTS REFERRED TO COMMITTEES.

### EXECUTIVE COMMITTEE.

Proposed amendment to By-Laws relating to Reception Committee. (See page 56.)

Proposed amendment to By-Laws relating to Committee Reports. (See page 57.)

### STANDING COMMITTEES.

#### *Commercial Law.*

Report on Modern Commercial Combinations recommended. (See pages 40 and 391.)

#### *Obituaries.*

To report names of Deceased Members. (See pages 42 and 448.)

#### *Patent, Trade-Mark and Copyright Law.*

To secure the passage of bills for creation of a Court of Patent Appeals and for amending the Trade-Mark law. (See pages 51 and 52.)

#### *Uniform State Laws.*

Situs of personal property for purposes of taxation. (See pages 20 to 27.)

#### *Insurance Law.*

New Standing Committee created. (See pages 10 and 54.)

### SPECIAL COMMITTEES.

#### *Classification of the Law.*

No report in 1904.

*Indian Legislation.*

Report received and filed. (See pages 47 and 454.)

*Penal Laws and Prison Discipline.*

Report on establishment of a Laboratory for the Study of the Criminal, Pauper and Defective Classes adopted. (See pages 51 and 458.)

*Federal Courts.*

Committee continued. (See page 52.)

*Industrial Property and International Negotiation.*

No report. Committee continued. (See page 53.)

*Title to Real Estate.*

No report. Committee continued. (See page 53.)

*Louisiana Purchase Exposition.*

Report made of arrangements for holding Congress of Lawyers and Jurists. (See pages 54 and 460.)

## ANNUAL ADDRESSES.

YEAR.	NAME.	SUBJECT.
1879.	EDWARD J. PHELPS, . . . . .	John Marshall.
1880.	CORTLANDT PARKER, . . . . .	Alexander Hamilton and William Paterson.
1881.	CLARKSON N. POTTER, . . . . .	Roger Brooke Taney.
1882.	ALEXANDER R. LAWTON, . . . . .	James Lewis Petigru and Hugh Swinton Legaré.
1883.	JOHN W. STEVENSON, . . . . .	James Madison.
1884.	JOHN F. DILLON, . . . . .	American Institutions and Laws.
1885.	GEORGE W. BIDDLE, . . . . .	An Inquiry into the Proper Mode of Trial.
1886.	THOMAS J. SEMMES, . . . . .	The Civil Law and Codification.
1887.	HENRY HITCHCOCK, . . . . .	General Corporation Laws.
1888.	GEORGE HOADLY, . . . . .	Codification.
1889.	SIMEON E. BALDWIN, . . . . .	The Centenary of Modern Government.
1890.	JAMES C. CARTER, . . . . .	The Ideal and the Actual in the Law.
1891.	ALFRED RUSSELL, . . . . .	Avoidable Causes of Delay and Uncertainty in our Courts.
1892.	J. RANDOLPH TUCKER, . . . . .	British Institutions and American Constitutions.
1893.	HENRY B. BROWN, . . . . .	The Distribution of Property.
1894.	MOORFIELD STOREY, . . . . .	The American Legislature.
1895.	WILLIAM H. TAFT, . . . . .	Recent Criticism of the Federal Judiciary.
1896.	LORD RUSSELL OF KILLOWEN, Lord Chief Justice of England,	International Law and Arbitration.
1897.	JOHN W. GRIGGS, . . . . .	Lawmaking.
1898.	JOSEPH H. CHOATE, . . . . .	Trial by Jury.
1899.	WILLIAM LINDSAY, . . . . .	Power of the United States to Acquire and Govern Foreign Territory.
1900.	GEORGE R. PECK, . . . . .	The March of the Constitution.

YEAR.	NAME.	SUBJECT.
1901.	CHARLES E. LITTLEFIELD, . . .	The Insular Cases.
1902.	JOHN G. CARLISLE, . . . . .	The Power of the United States to Acquire and Govern Territory.
1903.	LE BARON B. COLT, . . . . .	Law and Reasonableness.
1904.	AMOS M. THAYER, . . . . .	The Louisiana Purchase; Its In- fluence and Development Under American Rule.

## PAPERS READ.

YEAR.	NAME.	SUBJECT.
1879.	CALVIN G. CHILD, . . . . .	Shifting Uses, from the Standpoint of the Nineteenth Century.
1879.	HENRY HITCHCOCK, <sup>1</sup> . . . . .	The Inviolability of Telegrams.
1879.	GEORGE A. MERCER, . . . . .	The Relationship of Law and National Spirit.
1880.	HENRY E. YOUNG, . . . . .	Sunday Laws.
1880	GEORGE TUCKER BISPHAM, . .	Rights of Material Men and Em- ployees of Railroad Companies as against Mortgagees.
1880.	HENRY D. HYDE, . . . . .	Extradition between the States.
1881.	THOMAS M. COOLEY, . . . . .	The Recording Laws of the United States.
1881.	SAMUEL WAGNER, . . . . .	The Advantages of a National Bankrupt Law.
1882.	GUSTAVE KOERNER, . . . . .	The Doctrine of Punitive Damages and its Effect on the Ethics of the Profession.
1882.	U. M. ROSE, . . . . .	Titles of Statutes.
1882.	THOMAS J. SEMMES, . . . . .	The Civil Law as Transplanted in Louisiana.
1883.	ROBERT G. STREET, . . . . .	How far Questions of Public Pol- icy may enter into Judicial Decisions.
1883.	JOHN M. SHIRLEY, . . . . .	The Future of our Profession.
1883.	SIMEON E. BALDWIN, . . . . .	Preliminary Examinations in Criminal Proceedings.
1883.	SEYMOUR D. THOMPSON, . . .	Abuses of the Writ of Habeas Corpus.
1884.	ANDREW ALLISON, . . . . .	The Rise and Probable Decline of Private Corporations in America.
1884.	M. DWIGHT COLLIER, . . . . .	Stock Dividends and their Re- straint.
1884.	SIMON STERNE, . . . . .	The Prevention of Defective and Slipshod Legislation.

YEAR.	NAME.	SUBJECT.
1885.	RICHARD M. VENABLE, . . . .	Partition of Powers between the Federal and State Governments.
1885.	REUBEN C. BENTON, . . . .	The Distinction between Legislative and Judicial Functions.
1885.	FRANCIS RAWLE, . . . .	Car Trust Securities.
1886.	JOHNSON T. PLATT, . . . .	The Opportunity for the Development of Jurisprudence in the United States.
1886.	WILLIAM P. WELLS, . . . .	The Dartmouth College Case and Private Corporations.
1886.	JOHN F. DILLON, . . . .	Law Reports and Law Reporting.
1887.	HENRY JACKSON, . . . .	Indemnity the Essence of Insurance; Causes and Consequences of Legislation qualifying this Principle.
1887.	JAMES K. EDSALL, . . . .	The Granger Cases and the Police Power.
1888.	J. RANDOLPH TUCKER, . . . .	Congressional Power over Inter-State Commerce.
1888.	J. M. WOOLWORTH, . . . .	Jurisprudence Considered as a Branch of the Social Science.
1889.	HENRY B. BROWN, . . . .	Judicial Independence.
1889.	WALTER B. HILL, . . . .	The Federal Judicial System.
1890.	HENRY C. TOMPKINS, . . . .	The Necessity for Uniformity in the Laws Governing Commercial Paper.
1890.	DWIGHT H. OLMSTEAD, . . . .	Land Transfer Reform.
1890.	JOHN F. DUNCOMBE, . . . .	Election Laws.
1891.	FREDERICK N. JUDSON, . . . .	Liberty of Contract under the Police Power.
1891.	W. B. HORNBLOWER, . . . .	The Legal Status of the Indian.
1892.	JOHN W. CARY, . . . .	Limitations of the Legislative Power in Respect to Personal Rights and Private Property.
1892.	WILLIAM L. SNYDER, . . . .	The Problem of Uniform Legislation.
1893.	HENRY WADE ROGERS, . . . .	The Treaty-Making Power.
1893.	W. W. MCFARLAND, . . . .	The Evolution of Jurisprudence.



YEAR.	NAME.	SUBJECT.
1893.	U. M. ROSE, . . . . .	Trusts and Strikes.
1894.	HAMPTON L. CARSON, . . . . .	Great Dissenting Opinions.
1894.	CHARLES CLAFLIN ALLEN, . . . . .	Injunction and Organized Labor.
1895.	WILLIAM WIRT HOWE, . . . . .	Historical Relation of the Roman Law to the Law of England.
1895.	RICHARD WAYNE PARKER, . . . . .	The Tyrannies of Free Government, or the Modern Scope of Constitutional Guarantees of Liberty and Property.
1896.	JAMES M. WOOLWORTH, . . . . .	The Development of the Law of Contracts.
1896.	JOSEPH B. WARNER, . . . . .	The Responsibilities of the Lawyer.
1896.	MONTAGUE CRACKANTHORPE, of the English Bar, . . . . .	The Uses of Legal History.
1897.	ROBERT MATHER, . . . . .	Constitutional Construction and the Commerce Clause.
1897.	EUGENE WAMBAUGH, . . . . .	The Present Scope of Government.
1898.	LYMAN D. BREWSTER, . . . . .	Uniform State Laws.
1898.	L. C. KRAUTHOFF, . . . . .	Malice as an Ingredient of a Civil Cause of Action.
1899.	EDWARD Q. KEASBEY, . . . . .	New Jersey and the Great Corporations.
1899.	SIR WM. RANN KENNEDY, Judge of the English High Court, . . . . .	The State Punishment of Crime.
1900.	EDWARD AVERY HARRIMAN, . . . . .	<i>Ultra Vires</i> Corporation Leases.
1900.	JOHN BASSETT MOORE, . . . . .	A Hundred Years of American Diplomacy.
1900.	RICHARD M. VENABLE, . . . . .	Growth or Evolution of Law.
1901.	RICHARD C. DALE, . . . . .	Implied Limitations upon the Exercise of the Legislative Power.
1901.	HENRY D. ESTABROOK, . . . . .	The Lawyer, Hamilton.
1901.	CHARLES J. HUGHES, JR., . . . . .	The Evolution of Mining Law.
1901.	PLATT ROGERS, . . . . .	The Law of New Conditions— Illustrated by the Law of Irrigation.

YEAR.	NAME.	SUBJECT.
1902.	M. D. CHALMERS, Parliamentary Counsel to the Treasury (England), . . . . .	Codification of Mercantile Law.
1902.	AMASA M. EATON, . . . . .	The Origin of Municipal Incorporation in England and in the United States.
1902.	EMLIN MCCLAIN, . . . . .	The Evolution of the Judicial Opinion.
1903.	SIR FREDERICK POLLOCK, Of the English Bar, . . . . .	English Law Reporting.
1903.	WILLIAM A. GLASGOW, JR., . .	A Dangerous Tendency of Legislation.
1904.	J. M. DICKINSON, . . . . .	The Alaskan Boundary Case.
1904.	BENJAMIN F. ABBOTT, . . . .	To what Extent will a Nation Protect its Citizens in Foreign Countries?

## PAPERS READ.

### SECTION OF LEGAL EDUCATION.

YEAR.	NAME.	SUBJECT.
1893.	AUSTIN ABBOTT, . . . . .	Existing Questions of Legal Education.
1893.	SAMUEL WILLISTON, . . . . .	Legal Education.
1893.	EMLIN MCCLAIN, . . . . .	The Best Method of Using Cases in Teaching Law.
1894.	HENRY WADE ROGERS, . . . . .	Annual Address as Chairman.
1894.	JOHN F. DILLON, . . . . .	The True Professional Ideal.
1894.	JOHN D. LAWSON, . . . . .	Some Standards of Legal Education in the West.
1894.	SIMEON E. BALDWIN, . . . . .	Law School Libraries, and How to Use Them.
1894.	WOODROW WILSON, . . . . .	Legal Education of Undergraduates.
1894.	JOHN H. WIGMORE, . . . . .	A Principal of Orthodox Legal Education.
1894.	EDMUND WETMORE, . . . . .	Some of the Limitations and Requirements of Legal Education in the United States.
1894.	WILLIAM A. KEENER, . . . . .	The Inductive Method in Legal Education.
1895.	JAMES B. THAYER, . . . . .	Address as Chairman on The Teaching of English Law at Universities.
1895.	ERNEST W. HUFFCUT, . . . . .	The Relation of the Law School to the University.
1895.	DAVID J. BREWER, . . . . .	A Better Education the Great Need of the Profession.
1895.	LYMAN ABBOTT, . . . . .	The Relation of Law to Our National Development.
1895.	NATHAN S. DAVIS, . . . . .	The Importance of the Study of Medical Jurisprudence by Students of Law, and the Extent to which it should be Taught in Schools and Colleges for the Education of such Students.

948 PAPERS READ. SECTION OF LEGAL EDUCATION.

YEAR.	NAME.	SUBJECT.
1896.	EMLIN MCCLAIN, . . . . .	Address as Chairman, on The Law Curriculum.
1896.	CHARLES M. CAMPBELL, . . .	The Necessity and Importance of the Study of Common-Law Procedure in Legal Education.
1896.	BLEWETT LEE, . . . . .	Teaching Practice in Law Schools.
1896.	JAMES FAIRBANKS COLBY, . . .	The Collegiate Study of Law.
1896.	AUSTEN G. FOX, . . . . .	Two Years' Experience of the New York State Board of Law Examiners.
1896.	J. W. POWELL, . . . . .	On Primitive Institutions.
1896.	JOHN RANDOLPH TUCKER, . . .	What is the Best Training for the American Bar of the Future.
1896.	GEORGE HENRY EMMOTT, . . .	Legal Education in England.
1897.	HENRY E. DAVIS, . . . . .	Primitive Legal Conceptions in Relation to Modern Law.
1897.	JOHN A. FINCH, . . . . .	The Law of Insurance in the Law School.
1897.	CHARLES NOBLE GREGORY, . . .	The Wage of the Law Teacher.
1898.	SIMEON E. BALDWIN, . . . . .	Address as Chairman, on The Re-adjustment of the Collegiate to the Professional Course.
1898.	EDWARD A. HARRIMAN, . . .	Educational Franchises.
1898.	CHARLES W. NEEDHAM, . . .	Schools of Law: The Subjects, Order and Method of Study.
1899.	WILLIAM WIRT HOWE, . . . . .	Address as Chairman, on The Study of Comparative Jurisprudence.
1899.	THOMAS BARCLAY, . . . . .	The Teaching of the Law in France.
1899.	N. W. HOYLES, Q. C. . . . .	Legal Education in Canada.
1899.	JOSEPH WALTON, Q. C., . . .	Notes on the Early History of Legal Studies in England.
1900.	CHARLES NOBLE GREGORY, . . .	Address as Chairman, on the State of Legal Education in the World.
1900.	HARRY B. HUTCHINS, . . . . .	The Law School as a Factor in University Education.
1900.	WILLIAM DRAPER LEWIS, . . .	The Proper Preparation for the Study of Law.

PAPERS READ. SECTION OF LEGAL EDUCATION. 949

YEAR.	NAME.	SUBJECT.
1901.	NATHAN ABBOTT, . . . . .	The Undergraduate Study of Law.
1901.	CLARENCE D. ASHLEY, . . . .	Legal Education and Preparation Therefor.
1901.	RALEIGH C. MINOR, . . . . .	The Graduating Examination in the Law School.
1901.	HARRY SANGER RICHARDS, . .	Shall Law Schools Give Credit for Office Study?
1901.	WILLIAM P. ROGERS, . . . . .	Is Law a Field for Woman's Work?
1902.	ERNEST W. HUFFCUT, . . . . .	A Decade of Progress in Legal Education.
1902.	HENRY S. REDFIELD, . . . . .	A Defect in Legal Education.
1902.	FRANKLIN M. DANAHER, . . . .	Courses of Study for Law Clerks.
1903.	LAWRENCE MAXWELL, JR., . . .	Examinations for the Bar.
1903.	JAMES B. SCOTT, . . . . .	The Place of International Law in Legal Education.
1904.	JAMES BARR AMES, . . . . .	Address as Chairman ; Reviewing the actions on legal education of the Association, the Committees on Legal Education and the Section of Legal Education, since 1879.
1904.	GEORGE W. KIRCHWEY, . . . .	The Education of the American Lawyer.

## PAPERS READ.

### SECTION OF PATENT LAW.

YEAR.	NAME.	SUBJECT.
1895.	R. S. TAYLOR, . . . . .	Patent Law and Practice.
1899.	JAMES H. RAYMOND, . . . . .	Address as Chairman.
1899.	LESTER L. BOND, . . . . .	Preliminary Injunctions.
1899.	FREDERICK P. FISH, . . . . .	The Conditions under which Preliminary Injunctions in Patent Causes should be Granted or Refused.
1899.	E. B. SHERMAN, . . . . .	Masters in Chancery.
1899.	ARTHUR STEUART, . . . . .	What Constitutes Invention in the Sense of the Patent Law.
1899.	ROBERT S. TAYLOR, . . . . .	Shall There be One or More Special Courts of Last Resort in Patent Causes.
1900.	FREDERICK P. FISH, . . . . .	Address as Chairman.
1900.	LYSANDER HILL, . . . . .	Unfair Competition in Trade.
1900.	ARTHUR STEUART, . . . . .	Copyright for Design.
1902.	LESTER L. BOND, . . . . .	Address as Chairman.
1902.	ARTHUR P. GREELEY, . . . . .	Pending Trade-Mark Legislation.
1902.	ARTHUR STEUART, . . . . .	Trade-Marks: Criminal Remedy.
1902.	LYSANDER HILL, . . . . .	Preliminary Injunction in Patent Suits.
1902.	HAROLD BINNEY, . . . . .	History and Present Status of the Law Relating to Designs.
1902.	ARTHUR S. BROWNE, . . . . .	Patent Litigation from the Expert's Standpoint.
1902.	CHARLES MARTINDALE, . . . . .	Evils of the Present System of Producing Evidence in Equity Causes and a Remedy Therefor.
1902.	MELVILLE CHURCH, . . . . .	Is the Entire Jurisdiction of the Circuit Courts in the Matter of Suits for the Infringement of Patents Defined by the Act of March 3, 1897?

YEAR.	NAME.	SUBJECT.
1903.	ROBERT H. PARKINSON, . . .	Concerning Federal Trade-Mark Legislation: Its Needs, Whence and What the Power.
1903.	J. NOTA MCGILL, . . . . .	Liability of Officers of a Corporation for Infringement of a Patent.
1904.	EDMUND WETMORE, . . . . .	Address as Chairman, on Some Suggestions as to Reform in Practice and Procedure in Patent Cases in the Federal Courts.
1904.	WILLIAM W. DODGE, . . . . .	A Brief Review of Legislation Proposed at the Latest Session of Congress Pertinent to Patents and Trade-Marks.

## PAPERS READ.

### ASSOCIATION OF AMERICAN LAW SCHOOLS.

YEAR.	NAME.	SUBJECT.
1902.	JOSEPH H. BEALE, JR., . . . . .	The First Year Curriculum of Law Schools.
1903.	SIMEON E. BALDWIN, . . . . .	The Study of Elementary Law, a Necessary Stage in Legal Education.
1903.	WILLIAM S. CURTIS, . . . . .	Examinations in Law Schools.
1904.	ERNEST W. HUFFCUT, . . . . .	Address as President, on The Elective System in Law Schools.
1904.	HARRY S. RICHARDS, . . . . .	Entrance Requirements for Law Schools.

### CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

YEAR.	NAME.	SUBJECT.
1904.	AMASA M. EATON, . . . . .	Address as President, on The Negotiable Instruments Law, The Torrens System, Uniform Partnership Act, Marriage and Divorce Laws.
1904.	HORACE L. WILGUS, . . . . .	Should there be a Federal Incorporation Law for Commercial Corporations?

### CONFERENCE OF STATE BOARDS OF LAW EXAMINERS.

YEAR.	NAME.	SUBJECT.
1904.	LUCIUS H. PERKINS, . . . . .	The State Board—A Landmark in Lawyer-Making.
1904.	HOLLIS R. BAILEY, . . . . .	Practical Suggestions for the Conduct of Bar Examinations.
1904.	W. E. WALZ, . . . . .	The Bar Examination from the Standpoint of the Law School Student.



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